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

DIVISION OF
CORPORATION FINANCE

April 2, 2018

Keith L. Halverstam
Latham & Watkins LLP
keith.halverstam@lw.com

Re: Cognizant Technology Solutions Corporation
Incoming letter dated January 30, 2018

Dear Mr. Halverstam:

This letter is in response to your correspondence dated January 30, 2018 concerning the shareholder proposal (the "Proposal") submitted to Cognizant Technology Solutions Corporation (the "Company") by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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

April 2, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Cognizant Technology Solutions Corporation
Incoming letter dated January 30, 2018

The Proposal asks the board to take the steps necessary (unilaterally if possible) to amend the bylaws and each appropriate governing document to give holders in the aggregate of 15% of the Company's outstanding common stock the power to call a special shareowner meeting.

We are unable to concur in your view that the Company may exclude portions of the Proposal's supporting statement under rule 14a-8(i)(3). We are unable to conclude that you have demonstrated objectively that the portions of the supporting statement you reference are materially false or misleading. Accordingly, we do not believe that the Company may omit portions of the Proposal's supporting statement from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company's policies, practices and procedures do not compare favorably with the guidelines of the Proposal and that the Company has not, therefore, substantially implemented the Proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Kasey Robinson
Attorney-Adviser

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.

53rd at Third
885 Third Avenue
New York, New York 10022-4834
Tel: +1.212.906.1200 Fax: +1.212.751.4864
www.lw.com

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January 30, 2018

Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, D.C. 20549

Re: Cognizant Technology Solutions Corporation
Stockholder Proposal of John Chevedden
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is submitted on behalf of Cognizant Technology Solutions Corporation (the "Company") to notify the staff of the Division of Corporation Finance (the "Staff") of the Company's intention to exclude from the proxy materials for the Company's 2018 Annual Meeting of Stockholders (the "Proxy Materials") a stockholder proposal and supporting statement (attached hereto as Exhibit A, the "Proposal") submitted by Mr. John Chevedden ("Proponent").

The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if the Company excludes the Proposal as discussed in this letter.

Pursuant to Staff Legal Bulletin 14D (November 7, 2008) and Rule 14a-8(j), we are transmitting this letter by electronic mail to the Staff not less than 80 days before the Company intends to file its definitive Proxy Materials with the Commission and are sending copies of this letter concurrently to the Proponent.

I. The Proposal.

On December 21, 2017 at 10:06 a.m. Eastern Time, the Proponent sent an email to the Company. Attached to that email was a letter dated December 21, 2017, addressed to Mr. Harry Demas of the Company, and enclosing a proposal, entitled "[CTSH Rule 14a-8 Proposal, December 21, 2017] 12-21, Proposal [4] – Special Shareholder Meeting Improvement". On December 21, 2017 at 3:14 p.m. Eastern Time, the Proponent sent a second email to the Company. Attached to that email was a letter dated December 21, 2017 and marked "REVISED 21 DEC 2017 PM", addressed to Mr. Harry Demas of the Company, and enclosing the Proposal, entitled "[CTSH Rule 14a-8 Proposal, December 21, 2017 | Revised December 21, 2017 pm]

12-21, Proposal [4] – Special Shareholder Meeting Improvement". The Proposal and its supporting statement provide in relevant part as follows:

> Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.
>
> Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.
>
> Scores of Fortune 500 companies allow a more practical 10% of shares to call a special meeting compared to the entrenchment requirement of Stericycle. Cognizant Technology Solutions shareholders do not have the full right to call a special meeting that is available under state law.
>
> In fact we now have a sad joke of a right to call a special meeting.
>
> At Cognizant Technology Solutions it would take 25% of shares (instead of the 10% called for in Delaware law) and then all shares held for less than one continuous year would be disqualified. Thus in order to obtain the 25% requirement it could take the holders of 51% of CTSH shares (minus perhaps 26% of shares that were held for less than one continuous year) to obtain the 25% that represented one-year of continuous holdings.
>
> In other words it could take 51% of shares to go to the onerous process (by the shareholders who see an urgent need to call a special meeting) to initiate a special meeting in which 51% of shares would be needed to take action. This 2-stike CTSH retreat from the shareholder right provide by Delaware law sort of takes way the purpose of a special meeting.
>
> A special meeting is designed for a relatively small group of shareholders to call attention to an issue that management needs to be alerted to in order to avoid a downturn in the price of the stock or to alert management to an opportunity that management may be missing. By the time that as much as 51% of shares are concerned - the opportunity window may be long gone.
>
> Hopefully Cognizant Technology Solutions shareholders will be receptive to this proposal. At the 2017 annual meeting CTSH shareholders gave 99%

support to a shareholder proposal for a simple majority vote standard instead of a 67% vote standard on certain issues.

The revised December 21, 2017 letter, attaching the Proposal and supporting statement, is included in Exhibit A.

II. Basis for Exclusion.

A. The Company Has Already Substantially Implemented the Proposal

The Company requests that the Staff concur in its view that the Company may exclude the Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(10), which provides that a stockholder proposal may be omitted from a company's proxy materials if "the company has already substantially implemented the proposal." The Proposal requests that the Board take the necessary steps to permit stockholders owning at least 10% of the Company's outstanding common stock to call a special meeting of the shareholders. However, the Company's By-laws (the "Bylaws") provide that the Company's corporate secretary is required to call a special meeting of stockholders upon the written request of holders of an aggregate "net long position" of not less than 25% of the outstanding common stock of the Company continuously for at least one year.[1] As described in greater detail below, the Company believes that the express provision in the Bylaws providing stockholders the ability to call a special meeting of stockholders satisfies the essential objective of the Proposal and the By-laws compare favorably to the guidelines of the Proposal. As a result, the Company has substantially implemented the Proposal and believes the Proposal is excludable under Rule 14a-8(i)(10).

The purpose of Rule 14a-8(i)(10) is "to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management."[2] Rule 14a8(i)(10) does not require that a company implement every detail of a proposal in order to rely on the exclusion.[3] The Staff has maintained this interpretation of Rule 14a-8(i)(10) since 1983, when the Commission reversed its prior position of permitting exclusion of a proposal only where a company's implementation efforts had "fully" effectuated the proposal.[4]

Based on its revised approach, the Staff has taken the position that a proposal has been "substantially implemented" and may be excluded as moot when a company can demonstrate

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[1] *See* Article I, Section 2 of the Amended and Restated By-Laws of Cognizant Technology Solutions Corporation (As Amended and Restated on March 27, 2017) included as Exhibit B to this letter.

[2] SEC Release No. 34-12598, 41 Fed. Reg. 29982, 29985 (Jul. 7, 1976).

[3] *See generally* SEC Release No. 34-20091, 48 Fed. Reg. 28218 (Aug. 16, 1983).

[4] *Id*.

that it already has taken actions to address the essential elements of the proposal.[5] Applying this standard, the Staff has stated that "a determination that the company has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal."[6] Further, the Staff has provided no-action relief under Rule 14a-8(i)(10) when a company has satisfied the "essential objective" of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal.[7]

Here, the Proposal seeks to make it easier for stockholders to call special meetings by lowering the minimum ownership requirements imposed by the Company's Bylaws from 25% to 10%. The Staff has repeatedly taken the position, especially over the past two years, that a company can exclude a stockholder proposal that seeks to reduce the minimum ownership requirements applicable for a stockholder to utilize a bylaw provision if the company can

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[5] *See, e.g.*, *Exelon Corp.* (Feb. 26, 2010) (proposal requesting report disclosing its policies and procedures for political contributions, excludable under Rule 14a-8(i)(10) based on Exelon's publicly-disclosed political spending report); *NetApp, Inc*. (Jun. 10, 2015) (proposal requesting elimination of supermajority voting provisions, excludable under Rule 14a-8(i)(10) based on the fact that the company had already eliminated all supermajority voting requirements from the company's bylaws).

[6] *Texaco, Inc.* (Mar. 28, 1991) (proposal requesting that the Company subscribe to the "Valdez Principles" excludable based on the fact that the company had already adopted policies, practices and procedures with respect to the environment that compared favorably to the Valdez Principles).

[7] *See*, *e.g.*, *FedEx Corporation* (Jun. 15, 2011) (proposal requesting amendments to FedEx's corporate governance guidelines to adopt and disclose a written and detailed succession planning policy, substantially implemented by the "Succession Planning and Management Development" section of FedEx's publicly disclosed Corporate Governance Guidelines); *Citigroup Inc.* (Jan. 19, 2010) (proposal requesting the board of directors adopt a bylaw amendment requiring the company to have an independent director serve as lead director substantially implemented by the fact that the company had an independent director serving as board chairman and a bylaw in place requiring a lead director if the board chairman was not an independent director); *ConAgra Foods, Inc.* (Jul. 3, 2006) (proposal requesting publication of a sustainability report substantially implemented by the fact that the company had posted online a report on the topic of sustainability); *Talbots, Inc.* (Apr. 5, 2002) (proposal requesting that the company implement a corporate code of conduct based on the International Labor Organization (ILO) human rights standard substantially implemented where the company had already implemented a code of conduct addressing similar topics but not based on ILO standards); and *Nordstrom, Inc.* (Feb. 8, 1995) (proposal requesting a code of conduct for its overseas suppliers substantially implemented by existing company guidelines).

demonstrate that the change would not meaningfully increase the number of stockholders eligible to use the provision. *See e.g.*, *The Dun & Bradstreet Corp.* (Feb. 10, 2017) (proposal requesting that the board modify its proxy access bylaw to allow up to 50 stockholders to aggregate their shares for purposes of proxy access, excludable under Rule 14a-8(i)(10) where the company expected to increase that threshold to 35 stockholders and the number of stockholders that would have been able to use the bylaw provision would not have increased meaningfully with a further increase from 35 to 50); *General Dynamics Corp.* (Feb. 10, 2017) (proposal requesting that the board take the steps necessary to modify its existing proxy access bylaw to allow up to 50 stockholders to aggregate their shares for purposes of proxy access, excludable under Rule 14a8(i)(10) where the company's bylaw permitted aggregation by 20 stockholders and the number of stockholders that would have been able to use the bylaw provision would not have increased meaningfully with a further increase from 20 to 50); *NextEra Energy, Inc.* (Feb. 10, 2017) (same); *PPG Industries, Inc.* (Feb. 10, 2017) (same); *United Continental Holdings, Inc.* (Feb. 10, 2017) (same); *Eastman Chemical Co.* (Feb. 14, 2017) (same); *UnitedHealth Group, Inc.* (granted on recon., Mar. 2, 2017) (same); *see also*, *NVR, Inc.* (Mar. 25, 2016) (proposal requesting that the company amend its proxy access bylaw to eliminate its aggregation limitation among other changes, excludable under Rule 14a-8(i)(10) where the company had implemented some of the amendments, but retained its 20-stockholder aggregation limit); *Oshkosh Corp.* (Nov. 4, 2016) (same) (collectively, the "Proxy Access Reform No-Action Letters").

Finally, the Staff has permitted exclusion under Rule 14a-8(i)(10) of stockholder proposals, like the instant proposal, that requested the company's board give stockholders the power to call a special meeting where the company already had provisions in its bylaws permitting stockholders to call special meetings, even though the exact proposal was not implemented.[8] For example, in *General Dynamics Corp.* (Feb. 6, 2009), the Staff permitted exclusion of a proposal requesting a 10% ownership threshold for special meetings where the company planned to adopt 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. Despite the proposal and the company's proposed bylaw amendment differing regarding the minimum ownership threshold required for a group of stockholders to be able to call a special meeting, the Staff agreed with exclusion under Rule 14a-8(i)(10). Further, in *Johnson & Johnson* (Feb. 19, 2008), the Staff allowed the company to exclude a proposal that sought to give holders of a "reasonable percentage" of the company's stock the power to call a special meeting, where the company proposed to adopt a bylaw amendment that would give holders of 25% of the company's outstanding stock the power to call a special meeting. As in *General Dynamics* and *Johnson & Johnson*, the Company's Bylaws differ from the Proposal, but the fact remains that the Company's Bylaws addresses the essential objectives of the Proposal, *i.e.*, the ability of stockholders to call a special meeting.

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[8] *See, generally, General Dynamics Corp.* (Feb. 6, 2009); *Borders Group, Inc.* (Mar. 11, 2008); and *Johnson & Johnson* (Feb. 19, 2008).

Here, the Proposal seeks to allow holders of 10% of the Company's outstanding common stock to call a special meeting of stockholders. Article I, Section 2(A) of the Company's Bylaws requires the Company's corporate secretary to call a special meeting of stockholders upon the written request of stockholders having an aggregate "net long position" of not less than 25% of the outstanding common stock of the Company continuously for at least one year. Although the Proposal and the Company's Bylaws differ regarding the minimum ownership required for a group of stockholders to be able to call a special meeting of stockholders, Article I, Section 2(A) of the Company's Bylaws substantially implements the Proposal because it addresses the essential objective of the Proposal—ensuring that stockholders have a reasonable ability to call a special meeting.

Because the Bylaws already give stockholders the ability to call a special meeting, the primary feature that the Company hasn't implemented is the reduction of the minimum ownership requirement from 25% to 10%. The Proponent's concern appears to be that the current minimum ownership threshold to call a special meeting of the Company's stockholders unduly restricts or limits stockholders' ability to call a special meeting of stockholders. Yet, the 25% ownership limit contained in the Bylaws achieves the primary objective of the Proposal by ensuring that any stockholder may form a group by combining with any of a large number of other stockholders to achieve the 25% ownership threshold to call a special meeting of stockholders. Moreover, the difference between allowing holders of at least 10% of the Company's outstanding common stock or at least 25% of the Company's outstanding common stock to call a special meeting of stockholders is not meaningful in the context of the Company's stockholder base.

Based on data provided by FactSet on January 25, 2018 (the "FactSet Data"), the largest 50 institutional stockholders of the Company own approximately 66.1% of the outstanding common stock, and each of these 50 institutional stockholders owns at least 0.38% of the outstanding common stock. The largest 20 institutional stockholders of the Company own approximately 49.7% of the outstanding common stock, and each of these 20 institutional stockholders owns at least 0.89% of the outstanding common stock. Based on this share ownership, there are numerous combinations of the Company's top 50 stockholders that would allow them to call a special meeting. At the same time, any stockholder seeking to form a group to require the Company's corporate secretary to call a special meeting of stockholders, regardless of the size of its holdings, could achieve the minimum required ownership in any number of ways, by combining with a number of the 50 largest investors. As a result, the current ownership threshold of 25% in the Bylaws does not unduly restrict any stockholder from forming a group to require the Company's corporate secretary to call a special meeting of stockholders. In contrast, under any reasonable scenario, no small stockholder would be able to meet the minimum ownership requirements without working with the Company's largest stockholders—whether the minimum ownership requirement is 25% or 10%.

To illustrate the ease of forming a group based on the Company's current shareholdings, the Company currently has approximately 589,646,000 shares of common stock outstanding. Based on that number, to meet the 25% minimum ownership requirement to call a special

meeting, a group of stockholders would have to own approximately 147,411,500 shares. According to the FactSet Data, the 20 and 50 largest stockholders of the Company own approximately 292,852,000 shares and approximately 389,631,000 shares, respectively. There are innumerable combinations that would allow the Company's largest stockholders to form a group for the purpose of requiring the Company's corporate secretary to call a special meeting of stockholders. And, again, smaller stockholders could combine with any of the largest stockholders, in innumerable combinations, to form a group that would be capable of utilizing the special meeting provision of the Bylaws. Indeed, several large stockholders' holdings are so significant that a small stockholder would be able to aggregate shares with as few as five of these large stockholders to meet the 25% ownership requirement.

The requirement of the Bylaws that stockholders must continuously hold the Company's shares for at least one year does not significantly affect our stockholders' ability to call a special meeting. Based on a comparison of holdings by the Company's current largest 50 stockholders to their holdings at least twelve months prior, the current largest 50 institutional stockholders of the Company have owned approximately 56.5% of the outstanding common stock for at least one year (versus 66.1% currently). Moreover, it appears that the current largest 20 institutional stockholders of the Company have owned approximately 43.5% of the outstanding common stock for at least one year (versus 49.7% currently). And, based on the FactSet Data, a small stockholder would still be able to aggregate shares with as few as five of these large stockholders to meet the 25% ownership requirement. Therefore, the requirement in the Bylaws that only shares of common stock held for at least one year may count toward the 25% ownership threshold is not a meaningful restriction in the context of the Company's ownership profile, as most large stockholders of the Company are long-term holders.

Even though the Bylaws have not been implemented exactly as proposed by the Proponent, the 25% ownership limit contained in the Bylaws provides abundant opportunities for all holders of the Company's common stock to combine with other stockholders to reach the 25% minimum ownership requirement. As noted, the Proposal's requested 10% ownership threshold would not materially change the ability of the Company's stockholders to call a special meeting given the context of the Company's current stockholder base. Instead, it would simply reduce the average number of shares each member of a group would need to own if stockholders decided to form an eligible group to call a special meeting. Any decrease in the ownership threshold limit to call a special meeting only marginally decreases the number of stockholder combinations that could yield a group owning the requisite number of shares to call a special meeting. We do not believe that the reduction in the number of combinations would enhance, much less materially enhance, the ability of the Company's stockholders to call a special meeting.

Accordingly, as evidenced by the Staff's decisions in the Proxy Access Reform No-Action Letters and similar to *General Dynamics* and *Johnson & Johnson*, where the proposal and the company's bylaws differed regarding the minimum ownership threshold required for a group of stockholders to be able to call a special meeting yet the proposal was still excluded under Rule 14a-8(i)(10), the Company believes that it has satisfied the essential objective of the Proposal

and the Bylaws compare favorably to the guidelines of the Proposal. As a result, the Company has substantially implemented the Proposal and believes the Proposal is excludable under Rule 14a-8(i)(10).

B. Portions of the Supporting Statement are Materially False or Misleading

In the event the Staff does not concur with our view that the Proposal may be omitted from the Proxy Materials pursuant to Rule 14a-8(i)(10), the Company respectfully requests that the Staff concur with its view that portions of the supporting statement may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(3) because those portions of the supporting statement are materially false or misleading, as further discussed below.

Rule 14a-8(i)(3) provides that a supporting statement may be omitted from a proxy statement "[i]f the … supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." Rule 14a-9 specifically provides:

> No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

The Staff has explained that Rule 14a-8(i)(3) permits the exclusion of all or part of a stockholder proposal or the supporting statement if, among other things, the company demonstrates objectively that a factual statement is materially false or misleading. *Staff Legal Bulletin No. 14B* (Sept. 15, 2004), Item B.4. The Staff has consistently permitted exclusion of portions of supporting statements under Rule 14a-8(i)(3) where such portions of supporting statements were materially false or misleading under Rule 14a-9. *See*, *e.g.*, *Rite Aid Corporation* (March 13, 2015); and *Bob Evans Farms, Inc*. (June 26, 2006).

1. "(instead of the 10% called for in Delaware law)"

The supporting statement states, "At Cognizant Technology Solutions it would take 25% of the shares *(instead of the 10% called for in Delaware law)* and then all shares held for less than one continuous year would be disqualified" (emphasis supplied). The underlined/italicized phrase ("Statement 1") inherently suggests that Delaware law has established a general threshold requirement of 10% ownership for shareholders to call a special meeting. The General Corporation Law of the State of Delaware (the "DGCL") has no such requirement. The right to call a special meeting is contained in Section 211(d) of the DGCL (see Exhibit C). Not only does

Section 211(d) contain no ownership threshold, let alone a 10% ownership threshold, Section 211(d) does not specifically mention shareholders' right to call a special meeting at all—instead, Section 211(d) provides that special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws. Thus, Delaware law not only does not call for any particular percentage of stockholders to have the right to call a special meeting—let alone 10%—it does not call for stockholders to have the right to call a special meeting at all.

We note that Section 223(c) of the DGCL provides that a stockholder or stockholders holding at least 10% of the voting stock may petition the Court of Chancery to order a special meeting in the sole context that at the time of filling any vacancy or any newly created directorship the directors then in office constitute less than a majority of the board (see Exhibit C). This provision has nothing to do with the rights of stockholders to call a special meeting themselves or to force the company to call a special meeting. Therefore, the supporting statement's statement that Delaware law calls for 10% of stockholders to call a special meeting is objectively materially false or misleading. The Company therefore believes that it may properly exclude Statement 1 from the Proxy Materials as materially false or misleading pursuant to Rule 14a-8(i)(3).

2. "and then all shares held for less than one continuous year would be disqualified"

The supporting statement states, "At Cognizant Technology Solutions it would take 25% of the shares (instead of the 10% called for in Delaware law) *and then all shares held for less than one continuous year would be disqualified*" (emphasis supplied). In the first part of this sentence, we presume the Proponent is referring to the Bylaw's threshold requirement of 25% ownership to request a special meeting. However, the underlined/italicized portion of the sentence ("Statement 2") suggests that once that 25% ownership threshold is met, all shares held less than one continuous year would be "disqualified." While the Proponent does not indicate what those shares would be disqualified from doing, the reasonable stockholder would likely conclude based on the wording of this phrase that any shares held less than one year would be disqualified from voting at the special meeting, because the Proponent's use of the word "then" indicates that this disqualification would occur after reaching the 25% ownership threshold. This is objectively materially false or misleading as all stockholders on the record date who were eligible to vote on the subject matter of the special meeting would be able to vote, even if they held their shares for less than one year. The Company therefore believes that it may properly exclude Statement 2 from the Proxy Materials as materially false or misleading pursuant to Rule 14a-8(i)(3).

3. "Thus in order to obtain the 25% requirement it could take the holders of 51% of CTSH shares (minus perhaps 26% of shares that were held for less than one continuous year) to obtain the 25% that represented one-year of continuous holdings.

> In other words it could take 51% of shares to go to the onerous process (by the shareholders who see an urgent need to call a special meeting) to initiate a special meeting in which 51% of shares would be needed to take action."

In the above excerpt from the supporting statement ("Statement 3"), the Proponent first appears to be making the argument that the one-year continuous ownership requirement in the Bylaws would require the holders of 51% of the Company's shares to provide their consent in order for stockholders to properly request a special meeting under the Bylaws. This is objectively materially false or misleading. The Proponent appears to be arguing, based on purely hypothetical numbers, that it would take holders of 51% of the Company's shares to reach the 25% minimum ownership requirement because 26% of those shares would not have been held for one continuous year. In light of the Company's actual shareholdings, this is materially false or misleading. As discussed in Section II.A. above, based on the FactSet Data, the current largest 50 institutional stockholders of the Company have owned approximately 56.5% of the outstanding common stock for at least one year (versus current holdings of 66.1% for such stockholders). Moreover, the current largest 20 institutional stockholders of the Company have owned approximately 43.5% of the outstanding common stock for at least one year (versus current holdings of 49.7% for such stockholders). These data make clear that the Proponent's apparent assertion that the holders of 51% of the Company's shares would be required to participate in a special meeting request because 26% of their shares would not have been held for one continuous year has no basis in fact, and is objectively materially false or misleading.

In Statement 3, the Proponent next asserts that "it could take 51% of shares to go to the onerous process (by the shareholders who see an urgent need to call a special meeting) to initiate a special meeting". The Bylaws provide that holders of 25% of the Company's shares that have held such shares for at least one year and have complied with the additional requirements of Section 2 of the Bylaws may request that the corporate secretary of the Company call a special meeting. As noted above, well above 25% of the Company's shares have been held for at least one continuous year by the Company's 20 and 50 largest institutional stockholders, respectively. If holders of 25% of the Company's shares were to submit a request for a special meeting, and the Company's board of directors were to determine that the requesting stockholders complied with the requirements of Section 2 of the Bylaws, the holders of the Company's remaining shares would not be obligated to participate in any "onerous process" or take any action whatsoever. Instead, the Company's corporate secretary would be required to call a special meeting. The only action left for the remaining stockholders to take, if they so chose, would be to vote at the special meeting. As discussed above, all stockholders on the record date who were eligible to vote on the subject matter of the special meeting would be able to vote, even if they held their shares for less than one year. The Proponent's assertion that 51% of shares would have to participate in an "onerous process" to initiate a special meeting is therefore objectively materially false or misleading, in light of the Company's shareholdings and the requirements of the Bylaws.

Further, the second paragraph of Statement 3 asserts that it would take 51% of the Company's shares to take action at a special meeting. This is also objectively materially false or

misleading. Section 7 of the Bylaws provides that all questions to stockholders are determined by a majority of the votes cast on such questions, except as otherwise provided by the Company's certificate of incorporation, the Bylaws, the rules of any stock exchange applicable to the Company or other applicable law, including the DGCL.[9] This means that, for most subjects that could come before the stockholders at a special meeting, including with respect to the election of directors, approval of such matters would require the vote of a majority of the votes cast at the meeting.

The majority of votes cast voting standard is a significantly less stringent voting standard than the majority of outstanding shares standard asserted by the Proponent, particularly in the context of a special meeting, where broker non-votes would likely not count as shares represented at the meeting.[10] By way of example, at the Company's 2017 annual meeting of stockholders, 588,995,145 shares were outstanding and entitled to vote. Of those outstanding shares, 516,920,905 were present in person or represented by proxy at the meeting and, of the 516,920,905 shares present in person or represented by proxy, 39,913,187 shares were broker non-votes. Assuming 588,995,145 outstanding shares at a hypothetical special meeting of stockholders, under a majority of outstanding shares standard, the affirmative vote of at least 294,497,573 shares would be required for a proposal to be approved. Under the Company's majority of votes cast standard, however, assuming 477,007,718 shares were present in person or represented by proxy (the 516,920,905 shares represented at the 2017 annual meeting *minus* the 39,913,187 broker non-votes), it would take at most 238,503,860 shares, or 40.5% percent of the

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[9] Under the Company's certificate of incorporation and Bylaws, the only matters that require a higher vote are the amendment of the Bylaws by stockholders, the amendment of certain provisions of the certificate of incorporation, and the removal of directors, each of which requires the affirmative vote of the holders of at least 66 2/3rd% in voting power of all outstanding shares entitled to vote generally in the election of directors (the "Supermajority Matters"). We note that at the forthcoming 2018 Annual Meeting of Stockholders the Company intends to request that stockholders approve amendments to the Charter to eliminate the supermajority voting requirement with respect to the Supermajority Matters (the "Charter Amendment"), in response to a stockholder proposal approved by the stockholders, and supported by Company management, at the 2017 Annual Meeting of Stockholders. If the Company's proposal is approved by stockholders at the 2018 Annual Meeting of Stockholders, the Company expects to file the Charter Amendment with the Secretary of State of the State of Delaware promptly following the annual meeting.

[10] Under New York Stock Exchange Rule 452 (attached at Exhibit D) brokers do not have discretionary authority to vote without instructions from beneficial holders for any proposal by a stockholder that is being opposed by management, which would almost certainly be the case for any proposal submitted to stockholders at a stockholder requested special meeting. Where brokers do not have discretionary authority to vote for any of the proposals before a meeting, broker non-votes do not count as shares represented at that meeting.

outstanding shares, for a proposal to pass.[11] This is a material difference from the 51% of shares the Proponent claims would be necessary to take action at a special meeting.

While under the DGCL there are certain matters that would require the approval of the majority of the Company's outstanding shares at a special meeting, such as an amendment to the Company's certificate of incorporation, the reasonable shareholder would interpret the statement that it would take 51% of shares to take action at a special meeting to mean that the more stringent majority of outstanding shares voting standard applies to all matters that might come before a special meeting. By using the unlikely-to-apply, more stringent voting standard, the Proponent appears to be attempting to bolster his purported argument that the Company's 25% threshold for requesting a special meeting, combined with the one-year continuous holding requirement, in the Bylaws is unreasonable in light of the purported fact that a stringent voting standard would apply to proposals at a stockholder requested special meeting. However, the stringent voting standard referenced in Statement 3 is unlikely to apply at a stockholder requested special meeting, and therefore, the Proponent's statement, in the context made, is materially false or misleading. As a result, the Company believes that it may properly exclude Statement 3 in the supporting statement from the Proxy Materials pursuant to Rule 14a-8(i)(3).

4. "This 2-stike CTSH retreat from the shareholder right provide by Delaware law sort of takes way the purpose of a special meeting."

In the above excerpt from the supporting statement ("Statement 4"), the Proponent states as fact that the ability of stockholders to call a special meeting is a stockholder right provided by Delaware law. As noted in Section II.B.1. above, however, Delaware law is silent with respect to the right of stockholders to call a special meeting. Instead, Section 211(d) of the DGCL provides that special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws. Thus, stockholders only have an ability to call a special meeting if a company's certificate of incorporation or bylaws permits them to do so.[12] Therefore, Statement 4 is objectively materially false or misleading, and the Company believes that it may properly exclude Statement 4 from the Proxy Materials pursuant to Rule 14a-8(i)(3).

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[11] The calculation assumes that all 477,007,718 shares present in person or represented by proxy at the special meeting cast a "FOR" or "AGAINST" vote (*e.g.*, that there are no abstentions or failures to vote). If any shares were to abstain or simply not vote on a matter, the number of shares (and percentage of outstanding shares) necessary to approve a proposal would decrease.

[12] *See*, *also*, R. Franklin Balotti & Jesse A. Finkelstein, *Delaware Law of Corporations and Business Organizations* §7.4 (3d ed. 2018) ("Although Delaware law does not permit stockholders to require that special meetings be called absent a charter or by-law provision granting such rights, some corporations have by-laws permitting a specified percentage of shares to demand the calling of a special meeting.").

5. "A special meeting is designed for a relatively small group of shareholders to call attention to an issue that management needs to be alerted to in order to avoid a downturn in the price of the stock or to alert management to an opportunity that management may be missing. By the time that as much as 51% of shares are concerned - the opportunity window may be long gone."

In the above excerpt from the supporting statement ("Statement 5"), the Proponent states as fact that the purpose of a special meeting of stockholders is "for a relatively small group of shareholders to call attention to an issue that management needs to be alerted to in order to avoid a downturn in the price of the stock or to alert management to an opportunity that management may be missing." However, given that stockholders do not have the right under Delaware law to call a special meeting in the first place, unless a company chooses to give stockholders that ability in its certificate of incorporation or bylaws,[13] it is materially false or misleading to state that a special meeting is designed to permit a small group of stockholders to alert management to an issue. Instead, Section 211(d) of the DGCL makes clear that the purpose of a special meeting is for the board of directors of a company to seek approval from the stockholders for a matter that cannot or should not wait until the annual meeting. Therefore, Statement 5, which is predicated on the asserted fact regarding the purported purpose of a special meeting, is objectively materially false or misleading, and the Company believes that it may properly exclude Statement 5 from the Proxy Materials pursuant to Rule 14a-8(i)(3).

IV. Conclusion.

Based upon the foregoing analysis, the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Proposal is excluded from the Company's Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

In the event that the Staff disagrees that the Company may exclude the Proposal under Rule 14a-8(i)(10), the Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Commission if the Company excludes the underlined statements discussed in Section II.B of this letter pursuant to Rule 14a-8(i)(3) because they are materially false or misleading.

* * *

If the Staff does not concur with our position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, we request that the Proponent copy the undersigned on any response he may choose to make to the Staff, pursuant to Rule 14a-8(k).

---

[13] *See* discussion in Sections II.B.1. and II.B.4. above.

Please contact the undersigned at 212-906-1761 to discuss any questions you may have regarding this matter.

Sincerely,

Keith L. Halverstam
of Latham & Watkins LLP

Enclosures

cc: Matthew Friedrich, Executive Vice President, General Counsel and Chief Corporate Affairs Officer, Cognizant Technology Solutions Corporation
Harry Demas, Vice President, Assistant General Counsel, Cognizant Technology Solutions Corporation
Dennis G. Craythorn, Latham & Watkins LLP
John Chevedden

Exhibit A

The Proposal and Statement and Correspondence with the Proponent

From: ***
Sent: Thursday, December 21, 2017 10:06 AM
To: Demas, Harry (Cognizant) <Harry.Demas@cognizant.com>
Cc: Jonathan Olefson <JOlefson@cognizant.com>; Nelson, David (Cognizant) <David.Nelson@cognizant.com>
Subject: Rule 14a-8 Proposal (CTSH)``

Mr. Demas,
Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

*** ***

Mr. Harry Demas
Corporate Secretary
Cognizant Technology Solutions Corporation (CTSH)
500 Frank W. Burr Blvd.
Teaneck NJ 07666
PH: 201-801-0233
FX: 201 801-0243

Dear Mr. Demas,

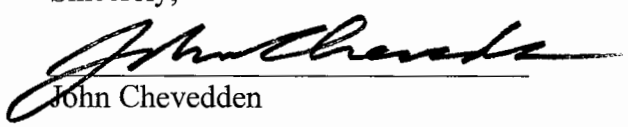
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial captializtion of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,



John Chevedden

December 21, 2017

Date

cc: Jonathan Olefson <JOlefson@cognizant.com>
David Nelson <david.nelson@cognizant.com>
Vice President, Investor Relations
PH: 201-498-8840
PH: 201-498-8818
FX: 201-801-0243

[CTSH – Rule 14a-8 Proposal, December 21, 2017]12-21
[This line and any line above it is not for publication.]

Proposal [4] – Special Shareholder Meeting Improvement

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

Scores of Fortune 500 companies allow a more practical 10% of shares to call a special meeting compared to the entrenchment requirement of Stericycle. Cognizant Technology Solutions shareholders do not have the full right to call a special meeting that is available under state law.

In fact we now have a sad joke of a right to call a special meeting.

At Cognizant Technology Solutions it would take 25% of shares (instead of the 10% called for in Delaware law) and then all shares held for less than one continuous year would be disqualified. Thus in order to obtain the 25% requirement it could take the holders of 51% of CTSH shares (minus perhaps 26% of shares that were held for less than one continuous year) to obtain the 25% that represented one-year of continuous holdings. In other words it could take 51% of shares to go to the onerous process (by the shareholders who see an urgent need to call a special meeting) to initiate a special meeting in which 51% of shares would be needed to take action.

Hopefully Cognizant Technology Solutions shareholder will be receptive to this proposal. At the 2017 annual meeting CTSH shareholders gave 99% support to a shareholder proposal for a simple majority vote standard instead of a 67% vote standard on certain issues.

Please vote to increase management accountability to shareholders:
Special Shareholder Meeting Improvement – Proposal [4]
[The line above is for publication.]

John Chevedden, *** sponsors this proposal.

Notes:
This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email
***

From: ***
Sent: Thursday, December 21, 2017 3:14 PM
To: Demas, Harry (Cognizant) <Harry.Demas@cognizant.com>
Cc: Jonathan Olefson <JOlefson@cognizant.com>; Nelson, David (Cognizant) <David.Nelson@cognizant.com>
Subject: Rule 14a-8 Proposal (CTSH)``

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John Chevedden

JOHN CHEVEDDEN

*** ***

Mr. Harry Demas
Corporate Secretary
Cognizant Technology Solutions Corporation (CTSH)
500 Frank W. Burr Blvd.
Teaneck NJ 07666
PH: 201-801-0233
FX: 201 801-0243

REVISED 21 DEC 2017 PM

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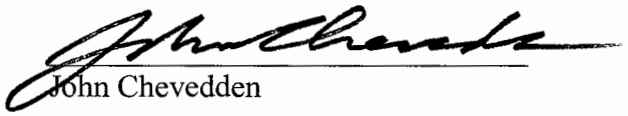
Sincerely,



John Chevedden

December 21, 2017

Date

cc: Jonathan Olefson <JOlefson@cognizant.com>
David Nelson <david.nelson@cognizant.com>
Vice President, Investor Relations
PH: 201-498-8840
PH: 201-498-8818
FX: 201-801-0243

[CTSH – Rule 14a-8 Proposal, December 21, 2017 | Revised December 21, 2017 pm]12-21
[This line and any line above it is not for publication.]

Proposal [4] – Special Shareholder Meeting Improvement

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.

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Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

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- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***

From:	Cooper, Jenna (NY)
Sent:	Thursday, December 21, 2017 4:03 PM
To:	***
Cc:	Halverstam, Keith (NY)
Subject:	Cognizant Shareholder Proposal (Special Meeting)
Attachments:	Letter to Chevedden (December 2017) - signed.pdf; Rule 14a-8. Shareholder Proposals.pdf; Staff Legal Bulletin No. 14F (Shareholder Proposals).pdf

Mr. Chevedden:

Please find attached a letter from Keith Halverstam on behalf of Cognizant Technology Solutions Corporation in reference to the revised shareholder proposal that you submitted on December 21, 2017. A hard copy of the letter has also been sent to you via Fed Ex.

Regards,

Jenna B. Cooper

LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022-4834
Direct Dial: +1.212.906.1324
Fax: +1.212.751.4864
Email: jenna.cooper@lw.com
http://www.lw.com

LATHAM & WATKINS LLP

53rd at Third
885 Third Avenue
New York, New York 10022-4834
Tel: +1.212.906.1200 Fax: +1.212.751.4864
www.lw.com

December 21, 2017

BY FEDEX AND ELECTRONIC MAIL

Mr. John Chevedden
***

Re: Stockholder Proposal

Dear Mr. Chevedden:

I am writing on behalf of our client, Cognizant Technology Solutions Corporation (the "Company"). On December 21, 2017 at 3:14 p.m. Eastern time, the Company received your email submitting a revised stockholder proposal (the "Proposal") for inclusion in the Company's proxy statement for its 2018 Annual Meeting of Stockholders. The email indicates that you intended for the Proposal to meet the requirements of Rule 14a-8 under the Securities Exchange Act of 1934, as amended ("Rule 14a-8"), including the continuous ownership of the required share value for at least one year by the date on which you submitted the Proposal through the date of the stockholder meeting. However, you do not appear in the Company's records as a registered stockholder, and the Company has not received verification of your stock ownership. As such, you have not demonstrated that you are eligible to submit the Proposal under Rule 14a-8(b).

In order for you to establish your eligibility to submit the Proposal under Rule 14a-8(b), you must submit to the Company either:

- a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted the Proposal, you continuously held at least $2,000 in market value or 1% of the Company's securities entitled to be voted on the Proposal at the meeting for at least one year by the date you submitted the Proposal; or
- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, and any subsequent amendments to those documents, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period began.

To help stockholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the staff of the SEC's Division of Corporation Finance (the "SEC Staff") published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for the purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at:

http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx

If your broker or bank is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which your securities are held. You should be able to determine the name of this DTC participant by asking your broker or bank. If the DTC participant knows of the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, you continuously held the required amount of securities for at least one year – with one statement from your broker or bank confirming your ownership, and the other statement from the DTC participant confirming the broker or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

In order for the Proposal to be properly submitted, you must provide the Company with the proper written evidence that you meet the stock ownership and holding requirements of Rule 14a-8(b). To comply with Rule 14a-8(f), you must postmark or transmit your response to this notice of procedural defect within 14 calendar days from the date you receive this notice. For your information, we have attached a copy of Rule 14a-8 regarding stockholder proposals.

Please note that the Company has made no inquiry as to whether or not the Proposal, if properly submitted, may be excluded pursuant to Rule 14a-8(i) or for any other reason. The Company will make such a determination once the Proposal has been properly submitted.

Sincerely,

Keith L. Halverstam
of LATHAM & WATKINS LLP

Enclosures
cc. Matthew Friedrich, Cognizant Technology Solutions Corporation
Harry Demas, Cognizant Technology Solutions Corporation

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Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on

DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC

participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then

submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8(c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is

authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4

or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was

excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

http://www.sec.gov/interps/legal/cfslb14f.htm

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Modified: 10/18/2011

To

Mr. John Chevedden
Mr. John Chevedden
***

United States
999-999-9999

From

Katherine Marren (01614)
Latham & Watkins LLP
885 Third Avenue
New York, NY
United States

phone/extension
+1.212.906.2980

office
NY

Billing

type
Client/Matter

account
client id: ***
matter id : ***
***

Operator

name
Williams Lea

phone/ext
212-906-1219

e-mail
NY.PrintMailCenter@lw.com

Shipping

vendor
FedEx

ship date
12/21/17

tracking number
***
Obtain Proof of Delivery

service
FedEx Priority Overnight®

packaging
FedEx® Envelope

signature
Service Default

options
None

courtesy quote
9.77 USD
Quote may not reflect all accessorial charges

Notification

notification type
Label Creation
Exception
Delivery

notification recipients
Katie.Marren@lw.com

Log

Activity for package id: ***

Date	*Action*	*By*	*Comment*
12/29/17, 3:12PM	Exported	LW\RGregory	Invoice: *** , $ 12.97
12/23/17, 4:29PM	Delivered	FedEx	Signed by: Signature not required
12/21/17, 6:24PM	En route	FedEx	Scheduled delivery date: 12/22/17
12/21/17, 4:16PM	Checked into mailroom	LW\NYWL	By scan
12/21/17, 4:14PM	Created	LW\NYWL	***

-----Original Message-----
From: ***
Sent: Tuesday, December 26, 2017 9:13 PM
To: Demas, Harry (Cognizant) <Harry.Demas@cognizant.com>
Cc: Nelson, David (Cognizant) <David.Nelson@cognizant.com>
Subject: Rule 14a-8 Proposal (CTSH) blb

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

TD Ameritrade

12/26/2017

John Chevedden
***

Re: Your TD Ameritrade Account Ending in *** in TD Ameritrade Clearing Inc DTC #0188

Dear John Chevedden,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than the below number of shares in the above referenced account since October 1, 2016.

1. Cognizant Technology Solutions Corp (CTSH) - 100 shares
2. Devon Energy Corp (DVN) - 50 shares
3. Netflix Inc (NFLX) - 20 shares
4. Equinix Inc (EQIX) - 10 shares

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,

Andrew P. Haag
Resource Specialist
TD Ameritrade

Exhibit B

Amended and Restated By-Laws of Cognizant Technology Solutions Corporation (As Amended and Restated on March 27, 2017)

AMENDED AND RESTATED BY-LAWS
OF
COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION
(AS AMENDED AND RESTATED ON MARCH 27, 2017)

ARTICLE I
STOCKHOLDERS

SECTION 1 The annual meeting of the stockholders of the corporation for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held at such time and place as may be designated from time to time by the Board of Directors.

SECTION 2 (A) Except as otherwise required by law and subject to the rights of any series of Preferred Stock, special meetings of stockholders of the corporation may be called only by (i) the Chief Executive Officer of the corporation, (ii) the Board of Directors pursuant to a resolution approved by the Board of Directors (each of (i) and (ii), a "Special Meeting Request"), or (iii) the Secretary upon the written request of stockholders having an aggregate "net long position" of not less than twenty-five percent (25%) (the "Requisite Percent") of the outstanding shares of the corporation, which are entitled to vote at the meeting, prior to the Request Receipt Date (as defined in Section 2(B) of this Article I), and having held such "net long position" continuously for at least one year, as of the date of such request, subject to Section 2(B) of this Article I (a "Stockholder Requested Special Meeting"). "Net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provided that (x) for purposes of such definition, in determining such holder's "short position," the reference in such Rule to "the date the tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Stockholder Special Meeting Request (as defined in Section 2(B) of this Article I) and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the corporation's Class A common stock on the NASDAQ Stock Market (or such other primary stock exchange on which the corporation's Class A common stock then trades) on such date (or, if such date is not a trading day, the next succeeding trading day) and (y) the net long position of such holder shall be reduced by the number of shares as to which such holder does not, or will not, have the right to vote or direct the vote on the matter or matters brought at the Stockholder Requested Special Meeting or as to which such holder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting holders have complied with the requirements of this Section 2 and related provisions of the By-laws shall be determined in good faith by the Board of Directors, which determination shall be conclusive and binding on the corporation and the stockholders.

(B) In order for a Stockholder Requested Special Meeting to be called, one or more special meeting requests (each a "Stockholder Special Meeting Request," and together, the "Stockholder Special Meeting Requests") must be signed by the Requisite Percent of record holders (or their duly authorized agents) and must be delivered to the Secretary of the corporation. The Stockholder Special Meeting Request(s) shall be delivered to the Secretary of the corporation at the principal executive offices of the corporation by registered mail, return receipt requested. The first date on which unrevoked valid Stockholder Special Meeting Request or Stockholder Special Meeting Requests made by holders of record having shares of Class A common stock representing in the aggregate not less than the Requisite Percent and delivered to the Secretary of the corporation in accordance with the provisions of the first two sentences of this Section 2(B) shall be the "Request Receipt Date." Each Stockholder Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it; (ii) bear the date of signature of each such stockholder (or duly authorized agent) signing the Stockholder Special Meeting Request; (iii) set forth (A) the name and address, as they appear in the corporation's stock ledger, of each stockholder signing such request (or on whose behalf the Stockholder Special Meeting Request is signed),

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(B) the class, if applicable, and the number of shares of common stock of the corporation that are owned of record and beneficially by each such stockholder and (C) include documentary evidence of such stockholder's record and beneficial ownership of such stock; (iv) include a detailed description of (A) any transaction in, or arrangement, agreement, understanding or relationship with respect to, any option, warrant, convertible or exchangeable security, stock appreciation right or right similar to any of the foregoing, hedging transactions or borrowed or loaned shares, with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the corporation, or similar instrument with a value derived in whole or in part from the value of a security of the corporation, in any such case whether or not it is subject to settlement in a security of the corporation or otherwise, (B) any transaction, arrangement, agreement, proxy, understanding or relationship which included or includes an opportunity for such person, directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the corporation, to receive or share in the receipt of dividends payable on any securities of the corporation separate or separable from the underlying shares, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the corporation or to increase or decrease the number of securities of the corporation which such person was, is or will be entitled to vote, in any case whether or not it is subject to settlement in a security of the corporation or otherwise, in each case under clauses (A) and (B) including, without limitation, any put or call arrangement, short position, borrowed shares or swap or similar arrangement and (C) any transaction, arrangement, agreement, understanding or relationship with respect to the borrowing or lending of securities of the corporation or any interest therein (in each case by, of or on behalf of such stockholder); (v) set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act, (vi) contain the information required by Section 9 of this Article I, (vii) in the case of any nominations of persons for election to the Board of Directors at such Stockholder Requested Special Meeting, the information required by Section 9(A)(2) of this Article I for a stockholder notice of a nomination at an annual meeting, (viii) in the case of any business, other than the election of a director or directors, proposed to be conducted at such Stockholder Requested Special Meeting, the information required by Section 9(A)(2) of this Article I for a stockholder notice of proposed business at an annual meeting, (ix) an agreement by the requesting stockholder(s) to notify the corporation immediately in the case of any disposition on or prior to the date of such Stockholder Requested Special Meeting of shares of common stock of the corporation held by such stockholder(s) and (x) an acknowledgement by the requesting stockholder(s) and the beneficial owner(s), if any, on whose behalf the Stockholder Special Meeting Request is being made, that any reduction in the number of shares held by such stockholder(s) below the Requisite Percent following delivery of the Stockholder Special Meeting Request shall be deemed a revocation of such Stockholder Special Meeting Request. Any requesting stockholder may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary at the principal executive offices of the corporation, and if, following such revocation, there are un-revoked requests from stockholders holding in the aggregate less than the Requisite Percent, the Board of Directors, in its discretion, may cancel the special meeting.

(C) Notwithstanding the foregoing, the Secretary of the corporation shall not be required to call a special meeting of stockholders if (i) the Board of Directors calls an annual or special meeting of stockholders to be held not later than sixty (60) days after the Request Receipt Date; or (ii) the Stockholder Special Meeting Request(s) (A) is received by the Secretary of the corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (B) contains an identical or substantially similar item (a "Similar Item") to an item that was presented at any meeting of stockholders held within the twelve months prior to the Request Receipt Date (and, for purposes of this clause (B) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors); (C) relates to an item of business that is not a proper subject for action by the party requesting the special meeting under applicable law; (D) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (E) does not comply with the provisions of this Section 2.

(D) Except as provided in the next sentence, any special meeting shall be held at such date and time as may be fixed by the Board of Directors in accordance with these By-laws and the laws of the State of Delaware. In the case of a Stockholder Requested Special Meeting, such meeting shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting, which shall be fixed in accordance with Section 8 of this Article I. In fixing a

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date and time for any Stockholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting.

(E) Business to be transacted at a special meeting, including a special meeting called by a Special Meeting Request or a Stockholder Requested Special Meeting, may only be brought before the meeting pursuant to the corporation's notice of meeting. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters not included in the Stockholder Special Meeting Request(s) to the stockholders at any Stockholder Requested Special Meeting.

SECTION 3 Except as otherwise provided by law, notice of the time, place and purpose or purposes of every meeting of stockholders shall be given not earlier than sixty, nor less than ten, days previous thereto to each stockholder of record entitled to vote at the meeting. Notice of any meeting of stockholders need not be given to any stockholders who shall waive notice thereof, before or after such meeting, in writing or by electronic transmission, or to any stockholder who shall attend such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 4 The holders of record of a majority in voting power of the issued and outstanding shares of the corporation, which are entitled to vote at the meeting, shall, except as otherwise provided by law, constitute a quorum at all meetings of the stockholders. If there be no such quorum present in person or by proxy, the holders of a majority in voting power of such shares so present or represented may adjourn the meeting from time to time.

SECTION 5 (A) Meetings of the stockholders shall be presided over by the Chief Executive Officer or Chairman, or, if neither is present, by a Vice President or, if no such officer is present, by a chairman to be chosen at the meeting. The Secretary of the corporation or, in his absence, an Assistant Secretary shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman shall appoint a secretary.

(B) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 6 Each stockholder entitled to vote at any meeting may vote in person or by proxy for each share of stock held by him which has voting power upon the matter in question at the time; but no proxy shall be voted on after three years from its date, unless such proxy provides for a longer period.

SECTION 7 At all elections of directors the voting shall be by ballot, and a nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which the Secretary of the corporation determines that the number of nominees exceeds the number of directors to be elected as of the record date for such meeting. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee. Except as otherwise provided by the Certificate of Incorporation, these By-laws, the rules or regulations of any stock exchange applicable to the corporation, or applicable law, all other questions to stockholders shall be determined by a majority of the votes cast on such questions.

SECTION 8 In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders 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. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 9 (A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors, (c) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 9 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 9, or (d) by a Nominating Stockholder (as defined in Section 10(A) of this Article I) who complies with the procedures set forth in Section 10 of this Article I. For the avoidance of doubt, the foregoing clauses (c) and (d) shall be the exclusive means for a stockholder to nominate a person for election to the Board of Directors, and the foregoing clause (c) shall be the exclusive means for a stockholder to propose other business (other than a proposal included in the corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act) at an annual meeting of stockholders.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 9, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business other than the nominations of persons for election to the Board of Directors must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one

hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of each nominee proposed in such notice, (ii) the principal occupation or employment of each such nominee, (iii) the number of shares of capital stock of the corporation that are beneficially owned by each such nominee, (iv) a statement whether each such nominee, if elected, intends to tender, promptly following such person's failure to receive the required vote for election or re-election at the next meeting at which such person would face election or reelection, an irrevocable resignation effective upon acceptance of such resignation by the Board of Directors, in accordance with the corporation's Corporate Governance Guidelines, (v) such other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act and (vi) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (iv) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 9 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 9 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(B) Special Meetings of Stockholders. (1) Business transacted at any special meeting shall be limited to the purposes stated in the corporation's notice of meeting; provided, however, that business transacted at any Stockholder Requested Special Meeting shall be limited to (i) the purpose(s) stated in the unrevoked valid Stockholder Special Meeting Request received from stockholder(s) of record holding shares representing in the aggregate at least the Requisite Percent and (ii) any additional matters that the Board of Directors determines to include in the corporation's notice of the meeting. Nominations of persons for election to the Board of Directors made by a stockholder or stockholders at any special meeting shall be made only in accordance with the notice procedures and requirements set forth in Section 2 of this Article I, in the case of a Stockholder Requested Special Meeting, and Section 9(B)(2) of this Article I, in the case of any other special meeting. Proposals made by a stockholder or stockholders of other business to be conducted at a special meeting may be made only in

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accordance with the procedures set forth in Section 2 of this Article I. Notwithstanding the provisions of Section 2 of this Article I or this Section 9, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in Section 2 of this Article I. Any references to the Exchange Act are not intended to and shall not limit the requirements applicable to stockholder-proposed business to be considered pursuant to Section 2 of this Article I.

(2) In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this Section 9 shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. (1) Except as otherwise provided in Section 10 of this Article I with respect to annual meetings of stockholders, only such persons who are nominated in accordance with the procedures set forth in this Section 9 shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(iv) of this Section 9) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 9, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(2) For purposes of this Section 9 and Section 10 of this Article I, "public announcement" shall include 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 (the "Commission") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9. Nothing in this Section 9 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

SECTION 10 Proxy Access.

(A) Subject to the provisions of this Section 10, if any Eligible Stockholder or group of Eligible Stockholders submits to the corporation a Proxy Access Notice that complies with this Section 10 and such Eligible Stockholder or group of Eligible Stockholders otherwise satisfies all the terms and conditions of this Section 10 (such Eligible Stockholder or group of Eligible Stockholders, a "Nominating Stockholder"), the corporation shall include in its proxy statement and/or on its form of proxy and ballot (collectively, "proxy materials") for any annual meeting of stockholders, in addition to any persons nominated for election by the Board of Directors or any committee thereof:

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(1) the name of any person nominated by such Nominating Stockholder for election to the Board of Directors at such annual meeting of stockholders who meets the requirements of this Section 10 (a "Proxy Access Nominee");

(2) disclosure about the Proxy Access Nominee and the Nominating Stockholder required under the rules of the Commission or other applicable law to be included in the proxy statement;

(3) subject to the other applicable provisions of this Section 10, a written statement, not to exceed 500 words, that shall fully comply with the other requirements of this Section 10 as well as Section 14 of the Exchange Act and the rules and regulations thereunder, including, but not limited to, Section 14a-9 (a "Supporting Statement"), included by the Nominating Stockholder in the Proxy Access Notice intended for inclusion in the proxy statement in support of the Proxy Access Nominee's election to the Board of Directors; and

(4) any other information that the corporation or the Board of Directors determines, in its discretion, to include in the proxy statement relating to the nomination of the Proxy Access Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section 10.

(B) Maximum Number of Proxy Access Nominees.

(1) The corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Proxy Access Nominees than that number of directors constituting 25% of the total number of directors of the corporation on the last day on which a Proxy Access Notice may be submitted pursuant to this Section 10 (rounded down to the nearest whole number, but not less than two) (the "Maximum Number"). The Maximum Number for a particular annual meeting shall be reduced by: the number of Proxy Access Nominees who are subsequently withdrawn or that the Board of Directors itself decides to nominate for election at such annual meeting (including, without limitation, any person who is or will be nominated by the Board of Directors pursuant to any agreement or understanding with one or more stockholders to avoid such person being formally proposed as a Proxy Access Nominee). In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in Section 10(D) of this Article I for submission of a Proxy Access Notice but before the date of the annual meeting, and the Board of Directors resolves to reduce its size in connection therewith, the Maximum Number shall be calculated based on the number of directors as so reduced.

(2) Any Nominating Stockholder submitting more than one Proxy Access Nominee for inclusion in the corporation's proxy materials shall rank such Proxy Access Nominees based on the order that the Nominating Stockholder desires such Proxy Access Nominees to be selected for inclusion in the corporation's proxy materials in the event that the total number of Proxy Access Nominees submitted by Nominating Stockholders exceeds the Maximum Number. In the event that the number of Proxy Access Nominees submitted by Nominating Stockholders exceeds the Maximum Number, the highest ranking Proxy Access Nominee from each Nominating Stockholder will be included in the corporation's proxy materials until the Maximum Number is reached, going in order (from largest to smallest) of the number of shares of Class A common stock of the corporation owned by each Nominating Stockholder as disclosed in each Nominating Stockholder's Proxy Access Notice. If the Maximum Number is not reached after the highest ranking Proxy Access Nominee of each Nominating Stockholder has been selected, this process will be repeated as many times as necessary until the Maximum Number is reached. If, after the deadline for submitting a Proxy Access Notice as set forth in Section 10(D), a Nominating Stockholder ceases to satisfy the requirements of this Section 10 or withdraws its nomination or a Proxy Access Nominee ceases to satisfy the requirements of this Section 10 or becomes unwilling or unable to serve on the Board of Directors, whether before or after the mailing of definitive proxy materials, then the nomination shall be disregarded, and the corporation: (a) shall not be required to include in its proxy materials the disregarded Proxy Access Nominee or any substitute therefor; and (b) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Proxy Access Nominee will not be included as a Proxy Access Nominee in the proxy materials and the election of such Proxy Access Nominee will not be voted on at the annual meeting.

(C) Eligibility of Nominating Stockholder. (1) An "Eligible Stockholder" is a person or entity who has either (a) been a record holder of the shares of Class A common stock used to satisfy the eligibility requirements in this Section 10(C) continuously for the three-year period specified in Subsection (2) below or (b) provides to the Secretary of the corporation,

within the time period referred to in Section 10(D) of this Article I, evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that satisfies the requirements as established by the Commission for a shareholder proposal under Rule 14a-8 under the Exchange Act (or any successor rule).

(2) An Eligible Stockholder or group of Eligible Stockholders may submit a nomination in accordance with this Section 10 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 Class A common stock throughout the three-year period preceding and including the date of submission of the Proxy Access Notice, and continues to own at least the Minimum Number through the date of the annual meeting. For the avoidance of doubt, in the event of a nomination by a group of Eligible Stockholders, any and all requirements and obligations for an individual Eligible Stockholder that are set forth in this Section 10, 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 stockholder withdraw from a group of Eligible Stockholders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

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

(4) For purposes of this Section 10, an Eligible Stockholder "owns" only those outstanding shares of the corporation as to which the Eligible Stockholder 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, that the number of shares calculated in accordance with clauses (a) and (b) shall not include any shares: (i) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (ii) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell, or (iii) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder 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: (w) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (x) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliates. An Eligible Stockholder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder 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 Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder 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 Stockholder. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares; provided that the Eligible Stockholder has the power to recall such loaned shares on no more than five business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Each Nominating Stockholder shall furnish any other information that may reasonably be required by the Board of Directors to verify such stockholder's continuous ownership of at least the Minimum Number during the three-year period referred to above.

(5) No person shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that owns the greatest aggregate number of shares of the corporation's Class A common stock as reflected in the Proxy Access Notice, and no shares may be attributed as owned by more than one person constituting a Nominating Stockholder under this Section 10.

(D) To nominate a Proxy Access Nominee, the Nominating Stockholder must timely submit to the Secretary of the corporation at the principal executive offices of the corporation the information and documents specified below in this Section 10(D) (collectively, the "Proxy Access Notice"). To be timely, a Nominating Stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the one-hundred-twentieth day nor earlier than the close of business on the one-hundred- fiftieth day prior to the first anniversary of the date that the corporation filed with the Commission its definitive proxy statement for the preceding year's annual meeting of stockholders (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after the anniversary date of the preceding year's annual meeting, notice by the Nominating Stockholder must be so delivered not earlier than the close of business on the one-hundred-fiftieth day prior to such annual meeting and not later than the close of business on the later of the one-hundred-twentieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation). For the avoidance of doubt, in no event shall any adjournment or postponement of an annual meeting or the public announcement thereof commence a new time period (or extend a time period) for the giving of a Proxy Access Notice pursuant to this Section 10. The Proxy Access Notice shall include:

(1) A copy of the Schedule 14N (or any successor form) relating to the Proxy Access Nominee, completed and filed with the Commission by the Nominating Stockholder as applicable, in accordance with the Commission's rules;

(2) A written notice of the nomination of such Proxy Access Nominee that expressly elects to have its nominee(s) included in the proxy materials pursuant to this Section 10 and includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

(a) the information and representations required with respect to the nomination of directors pursuant to Sections 9(A)(2)(a) and (c) of Article I of these By-laws;

(b) the details of any relationship that existed within the past three 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 Stockholder 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 the Proxy Access Nominee's candidacy or, if elected, Board membership, would not violate the corporation's Certificate of Incorporation, these By-laws, 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 the Proxy Access Nominee:

(i) does not have any direct or indirect material relationship with the corporation and otherwise would qualify as an independent director under the rules of the primary stock exchange on which the corporation's securities are traded;

(ii) would meet the audit committee independence requirements under the rules of the principal stock exchange on which the corporation's Class A common stock is traded;

(iii) would qualify as a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);

(iv) would qualify as an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision);

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(v) is not and has not been, within the past three years, an officer or director of a competitor, as defined under Section 8 of the Clayton Antitrust Act of 1914, as amended (the "Clayton Act"), and if the Proxy Access Nominee has held any such position during this period, details thereof; and

(vi) 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 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 the Proxy Access Nominee;

(f) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 10 (C) of this Article I, has provided evidence of ownership to the extent required by Section 10(C)(1) of this Article I and such evidence of ownership is true, complete and correct in all respects;

(g) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 10(C) of this Article I through the date of the annual meeting;

(h) a representation and warranty that the Nominating Stockholder will not engage in or support, directly or indirectly, 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 a solicitation in support of the Proxy Access Nominee or any nominee of the Board;

(i) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the corporation's proxy card in soliciting stockholders in connection with the election of a Proxy Access Nominee at the annual meeting;

(j) if desired by the Nominating Stockholder, a Supporting Statement; and

(k) 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.

(3) an executed agreement pursuant to which the Nominating Stockholder (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 with the Commission any written solicitation or other communication with the corporation's stockholders relating to any Proxy Access Nominee or one or more of the corporation's directors or director nominees, regardless of whether any such filing is required under any law, rule or regulation or whether any exemption from filing is available for such materials under any law, 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 Stockholder with the corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Proxy Access 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 Stockholder to comply

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with, or any breach or alleged breach of, its obligations, agreements, representations or warranties under this Section 10;

(e) in the event that (A) any information included in the Proxy Access Notice, or any other communication by the Nominating Stockholder (including with respect to any group member), with the corporation, its stockholders or any other person in connection with the nomination or election of directors ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or (B) the Nominating Stockholder (including any group member) fails to continue to satisfy the eligibility requirements described in Section 10(C) of this Article I, the Nominating Stockholder shall promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) (1) in the case of clause (A) above, notify the corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission, and (2) in the case of clause (B) above, notify the corporation why, and in what regard, the Nominating Stockholder fails to comply with the eligibility requirements described in Section 10(C) of this Article I; and

(4) An executed agreement by the Proxy Access Nominee:

(a) to complete and provide to the corporation a director questionnaire, and provide such other information as the corporation may reasonably request;

(b) that the Proxy Access Nominee agrees to be named in the proxy materials as a nominee and, if elected, to serve as a member of the Board of Directors; and

(c) that the Proxy Access Nominee is not and will not become a party to (A) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with service or action as a director of the corporation that has not been disclosed to the corporation, or (B) any agreement, arrangement or understanding with any person or entity as to how the Proxy Access Nominee would vote or act on any issue or question as a director that has not been disclosed to the corporation.

The information and documents required by this Section 10(D) of this Article I 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 Stockholder or group member that is an entity. The Proxy Access Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 10(D) (other than such information and documents contemplated to be provided after the date the Proxy Access Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the corporation.

(E) Exceptions and Clarifications.

(1) Notwithstanding anything to the contrary contained in this Section 10, (i) the corporation may omit from its proxy materials any Proxy Access Nominee and any information concerning such Proxy Access Nominee (including a Nominating Stockholder's Supporting Statement), and (ii) no vote on such Proxy Access Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the corporation), and the Nominating Stockholder may not, after the last day on which a Proxy Access Notice would be timely, cure in any way any defect preventing the nomination of the Proxy Access Nominee, if:

(a) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Section 10 or the Nominating Stockholder withdraws its nomination prior to the annual meeting;

(b) the Board of Directors determines that such Proxy Access 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 By-

laws or Certificate of Incorporation or any applicable law, rule or regulation to which the corporation is subject, including any rules or regulations of any stock exchange on which the corporation's securities are traded; or

(c) (i) the Nominating Stockholder fails to continue to satisfy the eligibility requirements described in Section 10(C) of this Article I, (ii) any of the representations and warranties made in the Proxy Access Notice ceases to be true and correct in all material respects (or omits to state a material fact necessary to make the statements made therein not misleading), (iii) the Proxy Access Nominee becomes unwilling or unable to serve on the Board of Directors or (iv) the Nominating Stockholder or the Proxy Access Nominee shall materially violate or breach any of its agreements, representations or warranties in this Section 10.

(2) Notwithstanding anything to the contrary contained in this Section 10, the corporation may omit from its proxy materials any information, including all or any portion of the Supporting Statement included in the Proxy Access Notice, if: (A) such information is not true and correct in all material respects or omits a material statement necessary to make the statements therein not misleading; (B) such information directly or indirectly impugns 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 materials would otherwise violate the Commission's proxy rules or any other applicable law, rule or regulation. Once submitted with a Proxy Access Notice, a Supporting Statement may not be amended, supplemented or modified by the Proxy Access Nominee or Eligible Stockholder except as expressly required pursuant to this Section 10.

(3) For the avoidance of doubt, the Company may solicit against, and include in the proxy statement its own statement relating to, any Proxy Access Nominee.

(4) This Section 10 provides the exclusive method for a stockholder to include nominees for election to the Board of Directors in the corporation's proxy materials (including, without limitation, any proxy card or voting facility).

(5) The interpretation of, and compliance with, any provision of this Section 10, including the representations, warranties and covenants contained herein, shall be determined by the Board of Directors or, in the discretion of the Board of Directors, one or more of its designees, in each case acting reasonably and in good faith.

ARTICLE II
BOARD OF DIRECTORS

SECTION 1 The Board of Directors of the corporation shall consist of such number of directors, not less than three, as shall from time to time be fixed by the affirmative vote of a majority of the Board of Directors. A majority of the total number of directors shall constitute a quorum for the transaction of business. Directors need not be stockholders.

SECTION 2 Vacancies in the Board of Directors and newly created directorships resulting from an increase in the number of directors shall be filled as provided in the Certificate of Incorporation.

SECTION 3 Meetings of the Board of Directors shall be held at such place within or without the State of Delaware as may from time to time be fixed by resolution of the Board of Directors or as may be specified in the notice of call of any meeting. Regular meetings of the Board of Directors shall be held at such times as may from time to time be fixed by resolution of the Board of Directors and special meetings may be held at any time upon the call of the Chief Executive Officer or Chairman, by oral, telegraphic, facsimile or written notice or notice by means of electronic transmission, duly served on or sent, given or mailed to each director not less than one day before the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board of Directors may be held without notice immediately after the meeting of stockholders at the same place at which such meeting is held. Notice need not be given of regular meetings of the Board of Directors held at times fixed by resolution of the Board of Directors. Notice of any meeting need not be given to any director who shall attend such meeting in person or who shall waive notice thereof, before or after such meeting, in writing or by electronic transmission. Unless otherwise provided by the Certificate of Incorporation or these By-laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the

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Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings (or electronic transmission or transmissions) are filed with the minutes of proceedings of the Board of Directors or committee.

SECTION 4 The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent permitted by law and provided in said resolution or resolutions, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it. A majority of the members of a committee shall constitute a quorum for the transaction of its business. The Board of Directors may designate one or more directors as alternate members of any committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors, to act at the meeting for all purposes in the place of any such absent or disqualified member. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

ARTICLE III
OFFICERS

SECTION 1 Within a reasonable amount of time after the Board of Directors election is held in each year, the Board of Directors shall elect officers of the corporation, including a Chief Executive Officer, one or more Vice Presidents, a Secretary and a Treasurer. The Board of Directors may also from time to time appoint such other officers (including a Chairman who shall be a member of the Board of Directors, one or more Vice Chairmen, one or more Assistant Secretaries and one or more Assistant Treasurers) as it may deem proper or may delegate to any elected officer of the corporation the power so to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior, or Regional, or may be given such other designation or combination of designations.

SECTION 2 All officers of the corporation elected or appointed by the Board of Directors shall hold office until their respective successors are chosen and qualified. Any officer may be removed from office at any time either with or without cause by the affirmative vote of a majority of the members of the Board of Directors then in office, or, in the case of appointed officers, by any elected officer upon whom such power of removal shall have been conferred by the Board of Directors.

SECTION 3 Each of the officers of the corporation elected or appointed by the Board of Directors shall have the powers and duties prescribed by law, by the By-laws or by the Board of Directors and, unless otherwise prescribed by the By-laws or by the Board of Directors, shall have such further powers and duties as ordinarily pertain to his office. The Chief Executive Officer shall be the Principal Executive Officer and shall have the general direction of the affairs of the corporation. Any officer, agent, or employee of the corporation may be required to give bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors may from time to time prescribe.

ARTICLE IV
CERTIFICATES OF STOCK

SECTION 1 Except as otherwise determined by resolution of the Board of Directors in respect of any uncertificated shares, the interest of each stockholder of the corporation shall be evidenced by a certificate or certificates for shares of stock in such form as the Board of Directors may from time to time prescribe. Subject to any applicable restrictions on transfer, the shares of the stock of the corporation shall be transferable on the books of the corporation by the holder thereof in person or by his attorney, upon surrender for cancellation of a certificate or certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, and with such proof of the authenticity of the signature as the corporation or its agents may reasonably require.

SECTION 2 The certificates of stock shall be signed by such officer or officers as may be permitted by law to sign (except that where any such certificate is countersigned by a transfer agent other than the corporation or its employee, or by a registrar other than the corporation or its employee, the signatures of any such officer or officers may be facsimiles), and shall be

countersigned and registered in such manner, all as the Board of Directors may by resolution prescribe. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on any such certificate or certificates shall cease to be such officer or officers of the corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been issued by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates, or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the corporation.

SECTION 3 No certificate for shares of stock in the corporation shall be issued in place of any certificate alleged to have been lost, stolen or destroyed, except upon production of such evidence of such loss, theft or destruction and upon delivery to the corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board of Directors in its discretion may require.

ARTICLE V
CORPORATE BOOKS

The books of the corporation may be kept outside of the State of Delaware at such place or places as the Board of Directors may from time to time determine.

ARTICLE VI
CHECKS, NOTES, PROXIES, ETC.

All checks and drafts on the corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be thereunto authorized from time to time by the Board of Directors. Proxies to vote and consents with respect to securities of other corporations or entities owned by or standing in the name of the corporation may be executed and delivered from time to time on behalf of the corporation by the Chief Executive Officer, or by such officers as the Board of Directors may from time to time determine.

ARTICLE VII
FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January in each year and shall end on the thirty-first day of December following.

ARTIVLE VIII
CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the corporation and the words "Corporate Seal" state and date of incorporation. In lieu of the corporate seal, when so authorized by the Board of Directors or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

ARTICLE IX
INDEMNIFICATION

SECTION 1 The corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, any director or officer of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with any such Proceeding. Notwithstanding the

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preceding sentence, except as otherwise provided in Section 4 below, the corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized in the specific case by the Board of Directors.

SECTION 2 The corporation shall have the power to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the corporation or, while an employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

SECTION 3 The corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by any officer or director of the corporation, and may pay the expenses incurred by any employee or agent of the corporation, in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article IX or otherwise. The right to advancement of expenses provided herein pertains to expenses incurred in connection with the Proceeding for which indemnification is provided.

SECTION 4 If a claim for indemnification (following the final disposition of such Proceeding) under this Article IX is not paid in full within ninety (90) days after a written claim therefor has been received by the corporation or if a claim for advancement of expenses under this Article IX is not paid in full within thirty (30) days after the corporation has received a statement or statements requesting such amounts to be advanced, the claimant shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law. Notwithstanding anything in these By-laws to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of a Proceeding.

SECTION 5 The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these By-laws, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 6 The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust enterprise or non-profit entity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

SECTION 7 The corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

SECTION 8 The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article IX shall continue notwithstanding that the person has ceased to be a director or officer of the corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

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SECTION 9 The provisions of this Article IX shall constitute a contract between the corporation, on the one hand, and, on the other hand, each individual who serves or has served as a director or officer of the corporation (whether before or after the adoption of these By-laws), in consideration of such person's performance of such services, and pursuant to this Article IX the corporation intends to be legally bound to each such current or former director or officer of the corporation. With respect to current and former directors and officers of the corporation, the rights conferred under this Article IX are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these By-laws. With respect to any directors or officers of the corporation who commence service following adoption of these By-laws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the corporation. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection (i) hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the corporation in effect prior to the time of such repeal or modification.

ARTICLE X
OFFICES

The corporation and the stockholders and the directors may have offices outside of the State of Delaware at such places as shall be determined from time to time by the Board of Directors.

ARTICLE XI
AMENDMENTS

The Board of Directors shall be authorized to make, amend, alter, change, add to or repeal the By-laws of the corporation in any manner not inconsistent with the laws of the State of Delaware. The affirmative vote of the holders of at least 66 ⅔ percent in voting power of all the outstanding shares of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders to make, amend, alter, change, add to or repeal any provision of the By-laws of the corporation.

ARTICLE XII
EXCLUSIVE FORUM

Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (the "Chancery Court") shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or agent of the corporation to the corporation or the corporation's stockholders, creditors or other constituents, (iii) any action or proceeding asserting a claim against the corporation or any director, officer, employee or agent of the corporation that arises under any provision of the Delaware General Corporation Law or the Certificate of Incorporation or these By-laws (in each case, as they may be amended from time to time), (vi) any action or proceeding to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or these By-laws (in each case, as they may be amended from time to time), or (v) any action or proceeding asserting a claim against the corporation or any director, officer, employee or agent of the corporation that is governed by the internal affairs doctrine. The provisions of this Article XII shall apply to the actions and proceedings described above whenever they are asserted, filed, or otherwise commenced, including without limitation any and all proceedings asserted, filed, or otherwise commenced prior to the date of adoption of this Article XII. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation (whether before, on, or after the date of adoption of this Article) shall be deemed to have notice of, and to have consented to, the provisions of this Article XII. If any provision or provisions of this Article XII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XII (including, without limitation, each portion of any sentence of this Article XII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired

thereby. In the event that the Chancery Court does not have jurisdiction, the Federal District Court for the District of Delaware shall be the sole and exclusive forum for each of the actions or proceedings described above. In the event that the Federal District Court for the District of Delaware does not have jurisdiction, any competent state court of the State of Delaware shall be the sole and exclusive forum for each of the actions or proceedings described above.

Exhibit C

Sections 211 and 223 of the
General Corporation Law of the State of Delaware

§ 211 Meetings of stockholders.

(a) (1) Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph or the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a)(2) of this section.

(2) If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

a. Participate in a meeting of stockholders; and

b. Be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

(b) Unless directors are elected by written consent in lieu of an annual meeting as permitted by this subsection, an annual meeting of stockholders shall be held for the election of directors on a date and at a time designated by or in the manner provided in the bylaws. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

(c) A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the corporation except as may be otherwise specifically provided in this chapter. If the annual meeting for election of directors is not held on the date designated therefor or action by written consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon as is convenient. If

there be a failure to hold the annual meeting or to take action by written consent to elect directors in lieu of an annual meeting for a period of 30 days after the date designated for the annual meeting, or if no date has been designated, for a period of 13 months after the latest to occur of the organization of the corporation, its last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting, the Court of Chancery may summarily order a meeting to be held upon the application of any stockholder or director. The shares of stock represented at such meeting, either in person or by proxy, and entitled to vote thereat, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the certificate of incorporation or bylaws to the contrary. The Court of Chancery may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date or dates for determination of stockholders entitled to notice of the meeting and to vote thereat, and the form of notice of such meeting.

(d) Special meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws.

(e) All elections of directors shall be by written ballot unless otherwise provided in the certificate of incorporation; if authorized by the board of directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

§ 223. Vacancies and newly created directorships

(a) Unless otherwise provided in the certificate of incorporation or bylaws:

> (1) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director;
>
> (2) Whenever the holders of any class or classes of stock or series thereof are entitled to elect 1 or more directors by the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, a corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the certificate of incorporation or the bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in § 211 or § 215 of this title.

(b) In the case of a corporation the directors of which are divided into classes, any directors chosen under subsection (a) of this section shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified.

(c) If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10 percent of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by § 211 or § 215 of this title as far as applicable.

(d) Unless otherwise provided in the certificate of incorporation or bylaws, when 1 or more directors shall resign from the board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Exhibit D

NYSE Rule 452

Rule 452. Giving Proxies by Member Organization

A member organization shall give or authorize the giving of a proxy for stock registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Voting member organization holdings as executor, etc.

A member organization may give or authorize the giving of a proxy to vote any stock registered in its name, or in the name of its nominee, if such member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock or to an investment adviser, registered either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock (hereinafter "designated investment adviser") to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 451, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to voted such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

Instructions on stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which has solicited voting instructions in accordance with the provisions of Rule 451(b)(1), shall

> (1) Forward to the second member organization any voting instructions received from the beneficial owner, or
>
> (2) if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 451 and no instructions have been received by the date specified in the statement accompanying such material, notify the second member organization of such fact in order that such member organization may give the proxy as provided in the third paragraph of this rule.

Signed proxies for stock in names of other member organizations

A member organization which has in its possession or control stock registered in the name of another member organization, and which desires to transmit signed proxies pursuant to the provisions of Rule 451(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

• • • Supplementary Material: ----------

Giving a Proxy To Vote Stock

.10 When member organization may vote without customer instructions.— Rule 452, above, provides that a member organization may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or to the beneficial owner's designated investment adviser in accordance with Rule 451, and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

.11 When member organization may not vote without customer instructions. —In the list of meetings of stockholders appearing in the Weekly Bulletin, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that members may vote a proxy without instructions of beneficial owners, (b) that members may not vote specific matters on the proxy, or (c) that members may not vote the entire proxy.

Generally speaking, a member organization may not give or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the Securities and Exchange Commission;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (i.e., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal);

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by subsection 8 of Section 303A of the Exchange's Listed Company Manual);

Commentary to Item 12 - A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. See Item 21.

(13) authorizes

> a. a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or
>
> b. the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

a. retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

b. any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

Commentary to Item 13 - A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. See Item 21.

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate; or

(19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940;

Commentary to Item 19 - This item will be applicable to proxy voting for shareholder meetings held on or after January 1, 2010, except to the extent that a meeting was originally scheduled to be held prior to such effective date but was properly adjourned to a date on or after such effective date.

(20) materially amends an investment advisory contract with an investment company; or

Commentary to Item 20 - A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially

the rights or privileges of such stock" for purposes of this rule so that a member organization may not give or authorize a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give or authorize a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

(21) relates to executive compensation.

Commentary to Item 21 - A matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 452. Any vote on these or similar executive compensation-related matters is subject to the requirements of Rule 452.

.12 Proportionate voting for auction rate preferred securities.— Notwithstanding any other provision of Rule 452, a member organization may vote auction rate preferred securities * with auction reset periods of one year or less in proportion to the voting instructions received from holders of the same class (or of the same series where the item must be voted upon separately by each series), in accordance with the provisions established below:

(1) It has transmitted proxy soliciting material to the beneficial owner of the auction rate preferred securities or to the beneficial owner's designated investment adviser in accordance with Rule 451, and

(2) It has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) A minimum of 30% of the outstanding shares of the same class or series (where a series vote may be required) has been voted by preferred security holders, and

(4) Less than 10% of the outstanding shares of the same class or series (where a series vote may be required) voted against the proposal, and

(5) For any proposal as to which both the common and preferred holders vote as a single class. Proportional voting will not be allowed unless common shareholders approve the proposal, and

(6) A majority of the independent directors of the issuer's board of directors approved the matter, and

(7) Adequate disclosure of proportional voting has been provided to beneficial holders.

.13 Discretionary and non-discretionary proposals in one proxy form.—In some cases, a proxy form may contain proposals, some of which may be acted upon at the discretion of the member organization in the absence of instructions, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the member organization may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.

.14 Cancellation of discretionary proxy where counter-solicitation develops.—Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a "contest," the question as to whether or not the discretionary proxy should then be cancelled is a matter which each member organization must decide for itself. After a contest has developed no further proxies should be given except at the direction of beneficial owners.

.15 Subsequent proxy.—Where a member organization gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for or in revocation of any prior proxy.

.16 Signing and dating a proxy—designating shares covered.—All proxies should be dated and should show the number of shares voted. Since manual signatures are sometimes illegible, a member organization should also either type or rubber-stamp its name on such proxy.

.17 Proxy records.—Records covering the solicitation of proxies shall show the following:

(1) The date of receipt of the proxy material from the issuer or other person soliciting the proxies;

(2) names of customers to whom the material is sent together with date of mailing;

(3) all voting instructions showing whether verbal or written; and

(4) a summary of all proxies voted by the member organization clearly setting forth total shares voted for or against or not voted for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the member organization. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

Instructions from beneficial owners may also be accepted by member organizations or their agents through the use of an automated telephone voting system, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the member organization or their agent.

.20 Retention of records.—All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.