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

DIVISION OF
CORPORATION FINANCE

February 12, 2018

Shelly A. Heyduk
O'Melveny & Myers LLP
sheyduk@omm.com

Re: Alaska Air Group, Inc.
Incoming letter dated January 3, 2018

Dear Ms. Heyduk:

This letter is in response to your correspondence dated January 3, 2018 concerning the shareholder proposal (the "Proposal") submitted to Alaska Air Group, Inc. (the "Company") by John Chevedden and Harrington Investments, Inc. for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from John Chevedden dated January 10, 2018, January 14, 2018 and January 15, 2018. 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

February 12, 2018

**Response of the Office of Chief Counsel**
**<u>Division of Corporation Finance</u>**

Re: Alaska Air Group, Inc.
Incoming letter dated January 3, 2018

The Proposal asks the board to amend the Company's proxy access bylaw provisions in the manner specified in the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). Accordingly, we do not believe that the Company may omit the Proposal 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 presented, we are unable to conclude that the Company's proxy access bylaw compares favorably with the guidelines of 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,

Evan S. Jacobson
Special Counsel

**DIVISION OF CORPORATION FINANCE**
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

*** JOHN CHEVEDDEN ***

January 15, 2018

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

**# 3 Rule 14a-8 Proposal**
**Alaska Air Group, Inc. (ALK)**
**Assured Shareholder Proxy Access**
**23% ALK Shareholder Support in 2017**
**John Chevedden**

Ladies and Gentlemen:

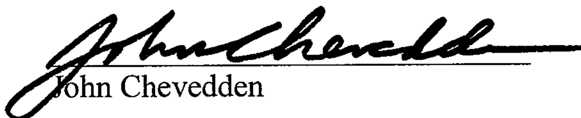
This is in regard to the January 3, 2018 no-action request.

In regard to level of support for the topic of this proposal, the no action request of one company said there were 21 rule 14a-8 proposals like this proposal. The average vote of support was 27%.

However it did not say what the highest supporting vote was and did not say that a higher vote than the highest 2017 vote was not possible in 2018.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Jennifer Thompson <jennifer.thompson@alaskaair.com>

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

*** **JOHN CHEVEDDEN**

***

January 14, 2018

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

**# 2 Rule 14a-8 Proposal**
**Alaska Air Group, Inc. (ALK)**
**Assured Shareholder Proxy Access**
**23% ALK Shareholder Support in 2017**
**John Chevedden**

Ladies and Gentlemen:

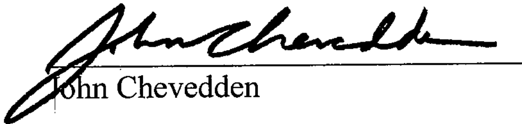
This is in regard to the January 3, 2018 no-action request.

The company in effect is asking the Staff to bypass this rule and state that a proposal topic that won 23%-support at the company 2017 annual meeting can be unpublished in 2018:

(12) Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy within the preceding 5 calendar years, a company may exclude it from its proxy for any meeting held within 3 calendar years of the last time it was included if the proposal received:
(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: Jennifer Thompson <jennifer.thompson@alaskaair.com>

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

*** JOHN CHEVEDDEN

***

January 10, 2018

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

**# 1 Rule 14a-8 Proposal**
**Alaska Air Group, Inc. (ALK)**
**Assured Shareholder Proxy access**
**John Chevedden**

Ladies and Gentlemen:

`This is in regard to the January 3, 2018 no-action request.

The company is trying to piggyback off of pre *H&R Block, Inc.* (July 21, 2017) cases that addressed proposal text with a different resolved statement.

The company dismisses the 23% of its shareholders who voted against the company position on proxy access in 2017. The company failed to state that it expects to do anything to make a repeat 23% vote or higher vote less likely in 2018. The company had no position on whether the new 2018 proxy access text might obtain a different voting outcome. The company did not address the new Glass Lewis position that a 20% vote contrary to management's recommendations is significant enough for a management response.

The company failed to cite any Staff Letter that said proxy access paperwork was too big a burden for a big company. The company failed to cite any Staff Letter on any topic that was decided upon a claim of too much company paperwork. The company did not claim that it was unable to outsource such paperwork. The company did not claim that outsourcing fails to increase efficiency. The company gave no estimate of the increased cost that it thinks this rule 14a-8 proposal could result in.

The company failed to mention reports that proxy access increases investor wealth. The company failed to mention that with the current too-restricted proxy access that it adopted along with a lot of other companies – that there has not been one proxy access attempt.

Additional responses will be forwarded.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

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

Sincerely,

John Chevedden

cc: Jennifer Thompson <jennifer.thompson@alaskaair.com>

[ALK – Rule 14a-8 Proposal, October 22, 2017]
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Assured Shareholder Proxy Access**

RESOLVED: Stockholders ask the board of directors to amend its proxy access bylaw provisions and any associated documents, to include the following changes for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for 3-years to satisfy the aggregate ownership requirements to form a nominating group and to increase the possible number of proxy access director candidates:
No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

The number of shareholder-nominated candidates eligible to appear in proxy materials will not be less than 2 when our board has less than 12 members. The number of shareholder-nominated candidates eligible to appear in proxy materials will not be less than 3 when our board has more than 12 members.

Even if the 20 largest public pension funds were able to aggregate their shares, they would not meet the current 3% criteria for a continuous 3-years at most companies according to the Council of Institutional Investors. This proposal addresses the situation that our company now has with proxy access potentially for only the largest shareholders who are the least unlikely shareholders to make use of it.

It is especially important to improve a shareholder right, such as proxy access, to make up for our management taking away an important shareholder right – the right to an in-person annual meeting. We did not even have an opportunity to vote on giving up this right.

For decades shareholders of U.S. companies had a once-a-year opportunity to ask a $6 million CEO and directors questions in person. Now our directors can casually flip their phones to mute during the annual shareholder meeting.

Our management is now free to run a make-believe meeting with Investor Relations devising softball questions in advance while tossing out serious shareholder questions. Then our $6 million CEO can simply read the scripted IR answers to a microphone – no opportunity for live audience feedback. There is no auditor present to see if IR is trashing incoming shareholder questions.

The lack of an in-person annual meeting means that a board meeting can be scheduled months after the virtual meeting – by which time any serious issues raised by shareholders under these adverse conditions will be long forgotten by the directors. Plus a virtual meeting guarantees that there will be no media coverage for the benefit of shareholders.

A virtual meeting is a complacency plan for our directors and top management. Top management has no incentive to avoid making mistakes for 365 days of the year out of concern that there will be an in-person accounting at the annual meeting. Shareholders can vote against the $6 million paycheck of a CEO who refuses to answer shareholder questions in-person and acts like in-person contact with shareholders is a nuisance.

Please vote to improve proxy access to help make up for top management stripping away an important shareholder right:

**Assured Shareholder Proxy Access – Proposal [4]**

[The above line – *Is* for publication.]

O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
CENTURY CITY
HONG KONG
LONDON
LOS ANGELES
NEW YORK

610 Newport Center Drive, 17th Floor
Newport Beach, California 92660-6429

TELEPHONE (949) 823-6900
FACSIMILE (949) 823-6994
www.omm.com

SAN FRANCISCO
SEOUL
SHANGHAI
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

OUR FILE NUMBER
11,140-14

WRITER'S DIRECT DIAL
(949) 823-7968

WRITER'S E-MAIL ADDRESS
sheyduk@omm.com

January 3, 2018

***VIA E-MAIL (shareholderproposals@sec.gov)***

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

Re: Alaska Air Group, Inc.
Shareholder Proposal of John Chevedden and Harrington Investments, Inc.
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client, Alaska Air Group, Inc., a Delaware corporation (the "Company"), which requests confirmation that the staff (the "Staff") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "Commission") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the Company omits the enclosed stockholder proposal (the "Proposal") and statement in support thereof (the "Supporting Statement") submitted by John Chevedden, as lead filer, and Harrington Investments, Inc., as a co-filer (together, the "Proponents"), from the Company's proxy materials for its 2018 Annual Meeting of Stockholders (the "2018 Proxy Materials").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

A copy of the Proposal and Supporting Statement and the Proponents' cover letters submitting the Proposal are attached hereto as Exhibit A. Copies of other correspondence with the Proponents regarding the Proposal are attached hereto as Exhibit B. The Company has not received any other correspondence relating to the Proposal.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin No. 14F (October 18, 2011), we ask that the Staff provide its response to this request to Shelly Heyduk, on behalf of the Company, at sheyduk@omm.com, and to the Proponents by email to John Chevedden, at *** and by facsimile to John Harrington, President of Harrington Investments, Inc., at (707) 257-7923.

## I. SUMMARY OF THE PROPOSAL

On October 22, 2017, the Company received an email from John Chevedden containing the Proposal and Supporting Statement for inclusion in the Company's 2018 Proxy Materials. On October 31, 2017, the Company received a separate copy of the Proposal and Supporting Statement by mail from John Harrington, on behalf of Harrington Investments, Inc., for inclusion in the Company's 2018 Proxy Materials. Harrington Investments, Inc. indicated that it was co-filing the Proposal with Mr. Chevedden and identified itself as a co-filer of the Proposal, with Mr. Chevedden acting as the lead filer. The Proposal requests that the Company's Board of Directors (the "Board") amend the Company's existing proxy access bylaw so that (a) "no limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors" and (b) "the number of shareholder-nominated candidates eligible to appear in proxy materials will not be less than 2 when [the Board] has less than 12 members [and] . . . not less than 3 when [the Board] has more than 12 members." *See* Exhibit A.

## II. EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2018 Proxy Materials in reliance on (a) Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal, and (b) Rule 14a-8(i)(3) because the Proposal and Supporting Statement are impermissibly vague and indefinite and contain statements that are materially false or misleading or are irrelevant to a consideration of the subject matter of the Proposal.

### A. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because It Has Been Substantially Implemented by the Company

*Original "Proxy Access" Bylaw Amendment and Recent Related Proposals*

At a meeting of the Board held on December 9, 2015, the Board approved amendments to the Company's Amended and Restated Bylaws (the "Amended Bylaws") to provide for proxy access. The Amended Bylaws were described in and filed as an exhibit to a Current Report on

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

Form 8-K filed with the Commission on December 15, 2015. A copy of the Amended Bylaws is also attached hereto as Exhibit C.

Just one year later, the Company received for inclusion in its proxy materials for its 2017 Annual Meeting of Stockholders (the "2017 Proxy Materials") a proposal from Mr. Chevedden, which requested that the Board amend the Amended Bylaws to "enable at least 50 shareholders to aggregate their shares to equal 3% of our stock owned continuously for 3-years in order to make use of shareholder proxy access" (the "2017 Proposal"). At the Company's 2017 Annual Meeting of Stockholders (the "2017 Meeting"), only approximately 23.3% of the votes cast at the 2017 Meeting voted in favor of the 2017 Proposal, which results are described in the Company's Current Report on Form 8-K filed with the Commission on May 10, 2017.

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

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission said that the exclusion is "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 12598 (July 7, 1976) (discussing the rationale for adopting the predecessor of Rule 14a-8(i)(10), which provided as a substantive basis for omitting a stockholder proposal that "the proposal has been rendered moot by the actions of the management"). At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable only if it had been "'fully' effected" by the company. *See* Exchange Act Release No. 19135 at § II.B. 5 (Oct. 14, 1982). The Commission later recognized, however, that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." *Id*. Accordingly, the Commission proposed in 1982 and adopted in 1983 a revised interpretation of the rule to permit the omission of proposals that had been "substantially implemented." *See* Exchange Act Release No. 20091 at § II.E.6 (Aug. 16, 1983) (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a stockholder vote on an existing company policy by changing only a few words). The Commission later codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998) (the "1998 Release"). Thus, when a company can demonstrate that it has already taken action to address the underlying concerns and essential objectives of a stockholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded. *See, e.g., General Electric Co.* (avail. Mar. 3, 2015); *Exelon Corp.* (avail. Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Exxon Mobil Corp.* (avail. Jan. 24, 2001); *Masco Corp.* (avail. Mar. 29, 1999); and *The Gap, Inc.* (avail. Mar. 8, 1996).

Applying this standard, the Staff has noted that "a determination that a 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." *Texaco, Inc.* (avail. Mar. 28, 1991). Even if a company's actions do not go as far as those requested by the stockholder proposal, they nonetheless may be deemed to "compare favorably" with the requested actions. *See, e.g., Walgreen Co.* (avail. Sept. 26, 2013) (permitting exclusion of a proposal requesting elimination of supermajority voting requirements in the company's governing documents where the company had eliminated all but one of the supermajority voting requirements.); *Johnson & Johnson* (avail. Feb. 17, 2006) (permitting exclusion of a proposal that requested the company to confirm the legitimacy of *all* current and future U.S. employees because the company had verified the legitimacy of 91% of its domestic workforce); *Masco Corp.* (avail. Mar. 29, 1999) (permitting exclusion of a proposal seeking adoption of a standard for independence of the company's outside directors because the company had adopted a standard that, unlike the one specified in the proposal, added the qualification that only material relationships with affiliates would affect a director's independence). In other words, a company can satisfy the substantial implementation standard under Rule 14a-8(i)(10) by satisfactorily addressing the underlying concerns and essential objectives of a stockholder proposal even where the company's actions do not precisely mirror the terms of such proposal.

Similarly, the Staff has recognized on numerous occasions that an aggregation limit is consistent with the essential objective of proxy access even where a stockholder sought to increase the aggregation limit. See, *e.g.*, *Leidos Holdings, Inc.* (avail. Mar. 27, 2017); *Quest Diagnostics Inc.* (avail. Mar. 23, 2017); *PayPal Holdings, Inc.* (avail. Mar. 22, 2017); *Ecolab Inc.* (avail. Mar. 16, 2017); *ITT Inc.* (avail. Mar. 16, 2017); *Edwards Lifesciences Corp.* (avail. Mar. 13, 2017); *Omnicom Group Inc.* (avail. Mar. 8, 2017); *Amazon.com, Inc.* (avail. Mar. 7, 2017); *Equinix, Inc.* (avail. Mar. 7, 2017); *General Motors Co.* (avail. Mar. 7, 2017); *Amphenol Corp.* (avail. Mar. 2, 2017); *Anthem, Inc.* (avail. Mar. 2, 2017); *Citigroup Inc.* (avail. Mar. 2, 2017); *International Paper Co.* (avail. Mar. 2, 2017); *PG&E Corp.* (avail. Mar. 2, 2017); *Sempra Energy* (avail. Mar. 2, 2017); *Target Corp.* (avail. Mar. 2, 2017); *Time Warner Inc.* (avail. Mar. 2, 2017); *United Health Group, Inc.* (avail. Mar. 2, 2017); *VeriSign, Inc.* (avail. Mar. 2, 2017); *Xylem Inc.* (avail. Mar. 2, 2017); *Northrop Grumman Corp.* (avail. Feb. 17, 2017); *Raytheon Co.* (avail. Feb. 17. 2017); *Eastman Chemical Co.* (avail. Feb. 14, 2017); *The Dun & Broadstreet Corp.* (avail. Feb. 10, 2017); *General Dynamics Corp.* (avail. Feb. 10, 2017); *NextEra Energy, Inc.* (avail. Feb. 10, 2017); *PPG Industries, Inc.* (avail. Feb. 10, 2017); *Reliance Steel & Aluminum Co.* (avail. Feb. 10, 2017); and *United Continental Holdings, Inc.* (avail. Feb. 10, 2017). In each of these letters, the Staff generally agreed that the company could exclude the proposals as substantially implemented, provided that the company demonstrated how the existing aggregation limit achieved the proposal's goal of providing a meaningful proxy access right.

The Staff's reasoning in these letters is consistent with the earlier approach taken by the Staff in *NVR, Inc.* (avail. Mar. 25, 2016) and *Oshkosh Corp.* (avail. Nov. 4, 2016). In *NVR*, for example, a stockholder proposed an "enhancement package" to the company's existing proxy access bylaw which, among other things, requested that the company eliminate a 20-stockholder aggregation limit. NVR implemented a few of the proponent's suggestions, but it did not eliminate the aggregation limit. The Staff nevertheless agreed that the proposal was excludable under Rule

14a-8(i)(10), noting that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal." The Staff reached the same conclusion on substantially similar facts in *Oshkosh Corp*. In the context of a company's existing proxy access bylaw, it appeared that the Staff did not view the stockholder aggregation limit as so critical to the essential objective of providing meaningful proxy access to stockholders that it would deny exclusion under Rule 14a-8(i)(10) based on a company's failure to adopt the stockholder aggregation limit precisely as requested in a stockholder proposal.

Despite the positions taken in the letters identified above, the Company is aware that the Staff has rejected at least one company's request for no-action relief based on substantial implementation of a proxy access proposal similar to the Proposal. *See H&R Block, Inc.* (avail. July 21, 2017). H&R Block had sought exclusion of a proposal under Rule 14a-8(i)(10) to eliminate the cap on stockholder aggregation to achieve the 3% eligibility threshold. While the Company does not know the rationale for the Staff's position on substantial implementation of proxy access, or whether *H&R Block* signals a shift in the Staff's position on substantial implementation of proxy access with respect to stockholder aggregation limits, the Company believes that the Staff should consider the context in which the Proposal was submitted.

Such context becomes particularly important in light of Mr. Chevedden's 2017 Proposal. As discussed above, the Company included in its 2017 Proxy Materials a proposal from Mr. Chevedden pursuant to which he requested that the Board amend the Amended Bylaws to increase the stockholder aggregation limit from 20 to 50. The 2017 Proposal received the support of only approximately 23.3% of the votes cast by stockholders at the 2017 Meeting. Thus, at the 2017 Meeting, the Company's stockholders sent to the Board a clear signal that the 20-stockholder aggregation limit was appropriate, which the Staff should consider along with the other facts and circumstances of the 2018 Proposal. It would be contrary to the Staff's regulatory objective that led the Commission to revise its interpretation of the "substantial implementation" standard in 1983 if stockholders could avoid exclusion under Rule 14a-8(i)(10) simply by requesting variations in the nominating group size, which is precisely what the Proponents have attempted to do after Mr. Chevedden's "variation" proposal was squarely rejected at the 2017 Meeting. By focusing on just one or two elements of the Company's existing proxy access provisions, the Proponents attempt to shift the focus from whether the Company's stockholders currently have a meaningful proxy access right to the secondary details of that right. A stockholder aggregation limit or the number of stockholder-nominated directors, or other tailored details of a proxy access bylaw may be different than what a proponent seeks to amend, but as the Staff has explained and demonstrated by way of its other no-action positions, "different" does not mean that the primary objective of a proposal has not already been substantially implemented. Otherwise, companies will have an ever-moving target that allows stockholders to escape exclusion under Rule 14a-8(i)(10) by simply changing one or two words of an existing proxy access bylaw. Such an approach would turn the Staff's "substantial implementation" analysis on its head.

- *Aggregation Limit*

The Proposal would permit an unlimited number of stockholders to aggregate their holdings of the Company's common stock for purposes of satisfying the 3% ownership threshold.

The Amended Bylaws currently permit the Company's stockholders to aggregate their holdings for purposes of satisfying the 3% ownership threshold, with a limit of 20 on the number of stockholders that may so aggregate. Specifically, Article II, Section 10(B) of the Amended Bylaws provides that "a stockholder or *an eligible group of no more than 20 stockholders*" (emphasis added) must have owned the Required Ownership Percentage (as defined in the Amended Bylaws) continuously for the Minimum Holding Period (as defined in the Amended Bylaws).

An aggregation limit is designed to minimize the burden on the Company in reviewing and verifying the information and representations that each member of a stockholder group must provide to establish the group's eligibility, while assuring that all stockholders have a fair and reasonable opportunity to nominate director candidates by forming groups with like-minded stockholders who also each own fewer than the minimum required shares. As discussed more fully below, the Company's aggregation limit achieves these dual objectives by assuring that any stockholder may form a group owning more than 3% of the Company's common stock by combining with any of a large number of other stockholders, while avoiding the imposition on the Company *and its other stockholders* of the cost of processing nominations from an *infinitely large* group of stockholders.

While there is no particular "science" to determining, for any company, the aggregation limit that will best achieve a balance between making proxy access reasonably available and avoiding a process that imposes an undue burden and expense on the Company to the detriment of other stockholders, a 20-stockholder aggregation limit has achieved a consensus among companies that have adopted proxy access. Of the over 370 public companies that adopted proxy access between January 2015 and February 2017, over 92% adopted an aggregation limit of 20 stockholders or fewer. A 20-stockholder aggregation limit is also the threshold adopted in the bylaws of T. Rowe Price Group, Inc., State Street Corporation, and Blackrock, Inc., the publicly traded parent companies of some of the largest institutional stockholders in the United States. The Company recognizes that the existence of a consensus regarding the appropriateness of a 20-stockholder aggregation limit does not mean that the Company's proxy access bylaw substantially implements the Proposal. The consensus does, however, support a conclusion that a 20-stockholder aggregation limit affords stockholders ample opportunity to combine with other stockholders to form a nominating group. The Company's own stockholders recognized and agreed with this consensus when they failed to approve the 2017 Proposal, which proposed that the aggregation limit be raised to 50 stockholders. Thus, the Company's stockholders signaled that a 20-stockholder aggregation limit strikes the appropriate balance of making proxy access fairly and reasonably available to all stockholders, regardless of the size of their holdings, while not creating a process that is burdensome, complex, and expensive.

The availability of proxy access to all stockholders under a 20-stockholder aggregation limit is particularly demonstrable in the Company's case. As of September 30, 2017, the Company had 6 stockholders with holdings in excess of 3%, without aggregation, five of which have held those securities continuously for three years. Together, these five stockholders own approximately 31.7% of the Company's outstanding shares of common stock. Another 10 of the Company's institutional stockholders owned, continuously for at least three years, shares of common stock constituting at least 1% (but less than 3%) of the Company's common stock as of September 30,

2017. Further, the top 25 institutional stockholders as of September 30, 2017 held approximately 56.8% of the Company' outstanding shares of common stock, with each of these 25 institutional stockholders owning at least approximately 0.7% of the Company's outstanding common stock. Of such institutional stockholders, 19 have held their shares of Company common stock for at least three years. In addition, as of September 30, 2017, 92 institutional investors, representing more than 78% of the Company's outstanding common stock, owned 0.15% or more of the Company's outstanding common stock, which is the minimum average percentage of common stock required to be owned by each individual stockholder in a 20-stockholder nominating group. Importantly, 64 of such institutional investors have held their respective shares for at least three years.

As of September 30, 2017, there were 517 institutional stockholders that owned less than 0.15% of the Company's outstanding common stock. Such stockholders accounted for less than 12% of the Company's outstanding common stock in the aggregate as of September 30, 2017. The concentration of significant holdings among the Company's stockholders described above means that there are abundant opportunities for the Company's stockholders, including these stockholders owning less than 0.15% of the Company's common stock, to combine their holdings with other stockholders to reach the 3% minimum ownership requirement, and to do so while also meeting the Company's minimum holding period of three years. Under the aggregation limit currently set in the Amended Bylaws, as long as at least one stockholder owns 3% of the outstanding common stock, any other stockholder, regardless of the size of his or her holdings, may utilize proxy access simply by forming a group with that stockholder. In addition, *any* stockholder holding less than 0.15% of the Company's outstanding stock may combine with up to *any other 19 stockholders* (provided that such stockholders also meet the Company's minimum holding period of three years) as long as the aggregate amount held by such group is at least 3% of the Company's outstanding common stock. Between these two extremes, innumerable possibilities exist for a stockholder who own less than 0.15% of the Company's common stock to form a group with any number of other stockholder to achieve aggregate ownership of 3% or more of the outstanding common stock. For example, the Company's top 10 institutional stockholders could on their own form a group representing 3% of the Company's common stock or any one of those 10 stockholders could form a group representing 3% of the Company's common stock with any combination of up to 19 of the Company's other stockholders, including one or more stockholders owning less than 0.15% of the Company's common stock. More importantly, *any* stockholder seeking to form a group to nominate a director candidate, regardless of the size of its holdings, could meet the ownership threshold in any number of ways, by combining with one or a small number of the 25 largest institutional investors. A stockholder group is not limited to these known institutional investors, of course, and a stockholder seeking to nominate a director candidate may approach any other stockholders to meet the 3% threshold. The 20-stockholder aggregation limit therefore does not unduly restrict any stockholder from forming a group to make a proxy access nomination.

To further illustrate the ease of forming a nominating group, as of September 30, 2017, the Company had 123,387,158 shares of common stock outstanding. Based on that number, to meet the 3% minimum ownership requirement, a stockholder or group of stockholders would have to own, and would have to have owned continuously for at least three years, 3,701,615 shares of the Company's common stock. A group of 20 stockholders would therefore need to hold an average of approximately 185,081 shares of common stock per group member. As highlighted above, 92

institutional stockholders owned at least 185,081 shares of the Company's common stock, with 64 of those stockholders owning those shares for at least three years. There are innumerable combinations that would allow the Company's 64 largest institutional stockholders holding their shares for at least three years to form 20-stockholder groups (or smaller groups) for the purpose of making a proxy access nomination. And, again, smaller stockholders could combine with any number of these stockholders, in innumerable combinations, to form a nominating group. Moreover, while one or more small stockholders can aggregate their shares with up to 19 of these largest institutional stockholders, to meet the ownership threshold, there are many combinations of far fewer than 20 stockholders that would meet the 3% ownership requirement. Indeed, several large stockholders' holdings are so significant (with 5 stockholders holding more than 3% of the Company's common stock and another 10 stockholders holding more than 1% (but less than 3%) of the Company's common stock, each for more than three years) that a small stockholder would be able to aggregate shares with as few as one (or if not one, just a handful) of these large stockholders to meet the 3% ownership requirement.

In an attempt to piggyback off of a recent victory in *H&R Block*, the Proponents disguise their purported purpose as "decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for 3 years to satisfy the aggregate ownership requirements to form a nominating group." To be sure, there are countless ways in which the Company could, by amending the proxy access provisions of its Amended Bylaws, achieve the Proponents' stated purpose. The Company could decrease the average amount of common stock required to be held by, for example, (a) increasing the maximum number of stockholders who could aggregate their holdings to 25 (decreasing the average holdings to 0.12%) (b) decreasing the aggregate amount required to be held to 2.99% (decreasing the average holdings to 0.1495%) or (c) increasing the aggregate amount required to be held to 5.0% and increasing the maximum number of stockholders who could aggregate their holdings to 34 (decreasing the average holdings to 0.1471%). The essential objective of the Proponents—to increase the accessibility of proxy access for the Company's smaller stockholders—is revealed in the Supporting Statement: "[t]his proposal addresses the situation that our company now has with proxy access potentially for only the largest shareholders who are the least unlikely shareholders to make use of it." Thus, the Proponents' underlying concern is actually that the proxy access provisions of the Amended Bylaws are available only to the Company's largest stockholders, with no accessibility to the Company's smallest stockholders. The Company's existing proxy access provision does not limit eligibility to submit a proxy access nomination to only the Company's largest stockholders, however. As described above, there are abundant opportunities for all of the Company's stockholders, including these stockholders owning less than 0.15% of the Company's common stock, to combine their holdings with other stockholders to reach the 3% minimum ownership requirement. Therefore, as demonstrated by the composition and shareholdings of the Company's institutional stockholders, the Proponents' *actual* essential objective has already been substantially implemented by the Company's existing proxy access provision.

The Proposal's requested "unlimited" aggregation scheme merely increases (in fact maximizes) the number of stockholder combinations that could yield a group owning more than 3% of the common stock without any evidence that those additional combinations will enhance, much less *materially* enhance, the availability of proxy access to the Company's stockholders.

There is no reason to believe that a solicitation of the type that would be required to form a group of stockholders would be more likely to attract support from 1,000 stockholders holding an average of 0.003% or even 100 stockholders holding an average of 0.03% than from 20 stockholders holding an average of 0.15% of the Company's common stock, or that the benefit of increased availability would not be offset by the increased costs necessary to coordinate a large stockholders group. We also note that the Proponents have not explained how, or cited any facts supporting an argument that, an unlimited aggregation limit will meaningfully increase the number of stockholders that seek to use proxy access. The absence of any such explanation speaks volumes in light of the Company's stockholders' disapproval of the 2017 Proposal, which sought to increase the aggregation limit from 20 to 50.

The figures set forth above substantiate what the Company's stockholders already knew at the 2017 Meeting–that the current 20-stockholder aggregation limit affords a *real* opportunity for stockholders to meet the minimum requirements under the Amended Bylaws and achieves the objective of making proxy access fairly and reasonably available to *all stockholders, regardless of the size of their individual holdings*. Accordingly, the proxy access provisions of the Amended Bylaws substantially implement the Proposal with respect to stockholders' ability to aggregate their respective holdings to meet the 3% holding requirement.

- *Number of Nominees*

The Proposal would limit "the number of shareholder-nominated candidates eligible to appear in proxy materials" to "not [] less than 2" when the Board consists of less than 12 directors and to "not [] less than 3" when the Board consists of more than 12 directors. The Company's Amended Bylaws also currently provide a limit on the number of stockholder-nominated candidates. Article II, Section 10(D) of the Amended Bylaws provides that "[t]he maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the corporation's proxy materials with respect to an annual meeting of stockholders shall be the greater of (1) 20% of the total number of Directors in office (rounded down to the nearest whole number) as of the last day on which a Notice of Proxy Access Nomination may be timely delivered pursuant to and in accordance with this Section 10 (the "Final Proxy Access Nomination Date"), or (2) two."

The Board presently consists of 10 directors. Therefore, under both the Proposal and the Amended Bylaws, at least two stockholder-nominated candidates may be nominated by stockholders pursuant to the proxy access right. Where the Board consists of 13 or more directors, the Proposal, however, would allow for the inclusion of at least three nominees, whereas the Amended Bylaws would require three nominees to be included only when the Board consists of 15 or more directors. Although, mathematically, the Proposal differs slightly from the Amended Bylaws, as a practical matter, there currently is no difference between the number of nominees a stockholder may include pursuant to the Amended Bylaws and the number of nominees that may be included under the Proposal. For the past decade, the Company's Board has never consisted of more than 11 directors, and the Company presently has no intention of increasing the size of the Board beyond 11 directors. Thus, the Proposal would not provide to stockholders any broader rights than are already provided under the Amended Bylaws. As explained above, the Staff has

made clear that a company's actions may be deemed to "compare favorably" with actions requested by a stockholder proposal even if they do not go so far as those requested by the proposal. In this case, the Amended Bylaws compare favorably with the Proposal considering the limited circumstances in which the Proposal would allow stockholders to include an additional nominee and the practical reality that there is, in fact, no difference between the Proposal and the Company's existing proxy access right when considered in the context of the Board's size over the past decade. Accordingly, the proxy access provisions of the Company's existing Amended Bylaws substantially implement the Proposal with respect to the minimum number of stockholder-nominees.

### B. The Proposal and Supporting Statement May Be Excluded Pursuant to Rule 14a-8(i)(3) Because They Are Impermissibly Vague and Indefinite and Contain Statements that are Materially False or Misleading.

*Rule 14a-8(i)(3) Background*

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite stockholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("SLB 14B"). *See also Dyer v. SEC*, 287 F. 2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."). Moreover, the Staff has explained that "[i]n evaluating whether a proposal may be excluded on this basis, we consider only the information contained in the proposal and supporting statement and determine whether, based on that information, shareholders and the company can determine what actions the proposal seeks." Staff Legal Bulletin No. 14G (Oct. 16, 2012) ("SLB 14G").

In applying the "inherently vague and indefinite" standard under Rule 14a-8(i)(3), the Staff has long held the view that a proposal does not have to specify the exact manner in which it should be implemented, but that discretion as to implementation and interpretation of the terms of a proposal may be left to the company's board. However, the Staff also has noted that a proposal may be materially misleading as vague and indefinite where "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (avail. Mar. 12, 1991).

The Staff has on numerous occasions permitted the exclusion of proposals under Rule 14a-8(i)(3) where the proposal was so inherently vague and indefinite that stockholders voting on it would be unable to ascertain with reasonable certainty what actions or policies the company should undertake if the proposal was enacted. *See, e.g., Walgreen Boots Alliance, Inc.* (avail. Oct. 7,

2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the board make a determination, before taking any action whose primary purpose is to prevent the "effectiveness of a shareholder vote," of whether there is a compelling "justification" for such action); *Alaska Air Group, Inc.* (avail. Mar. 10, 2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the board amend the company's bylaws or other governing documents to require management to "strictly honor shareholders right to disclosure identification and contact information"); *The Dow Chemical Company* (avail. Feb. 4, 2013) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the company submit the "eBook Proposal" for a stockholder vote, along with other matters); *Yahoo! Inc.* (avail Mar. 26, 2008) (excluding a proposal under Rule 14a-8(i)(3) requiring the board of directors to "establish a new policy of doing business in China"); *Bank of America Corp.* (avail. Feb. 25, 2008) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) requesting that the company "amend its GHG emissions policies"); *The Procter & Gamble Co.*(avail. Oct. 25, 2002) (excluding a proposal requesting the company establish a fund to "provide lawyer's, clerical help witness protection, and records protection and other appropriate help" for victims based on their status as stockholders of publicly owned companies); and *Puget Energy, Inc.* (avail. May 7, 2002) (excluding a proposal requesting that the company "implement a policy of improved corporate governance").

The Staff consistently has been of the view that a company may exclude stockholder proposals under Rule 14a-8(i)(3) where the company has "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading." *See, e.g.*, *Ferro Corporation* (avail. Mar. 17, 2015). In SLB 14B, for example, the Staff recognized that the exclusion of all or a part of a proposal or supporting statement may be appropriate where, among other circumstances, (a) the company demonstrates objectively that a *factual statement is materially false or misleading*; or (b) *substantial portions of the supporting statement are irrelevant to a consideration of the subject matter of the proposal*, such that there is a strong likelihood that a reasonable stockholder would be uncertain as to the matter on which he or she is being asked to vote. Although the Company is mindful of the Staff's view that it is appropriate for companies to respond to certain factual inaccuracies in their statements of opposition rather than excluding supporting language and/or entire proposals, the Staff nonetheless recognizes that there continues to be certain situations in which modifications or exclusions may be an appropriate response. SLB 14B. The Company believes that having to address those assertions in a statement of opposition would undermine the Company's substantive objections to the Proposal if it is included in the 2018 Proxy Materials.

*The Proposal and Supporting Statement are Impermissibly Vague and Indefinite*

By its terms, the Proposal provides that the number of stockholder-nominated candidates eligible to appear in proxy materials shall *not be less than* two when the Board has less than 12 members and shall *not be less than* three when the Board has more than 12 members. By specifying only that there "not be less than" the specified number of stockholder-nominees, the Proposal suggests that the number of stockholder-nominees can actually exceed two (in the case of less than 12 directors) or three (in the case of more than 12 directors) without any additional detail as to how the number of nominees should be calculated or whether there is a cap based on the size of the Board. Moreover, the Proposal's language partially condenses the bifurcated

standards such that three or more stockholder-nominees may actually be allowed regardless of the size of the Board. The Proposal suggests that its purpose in this regard is to "increase the number of proxy access nominees." Stockholders reviewing the Proposal, however, will be unable to discern whether the Proposal's language is (a) intended to operate as a cap to replace the cap currently set at 20% of the number of directors on the Board (rounded down) (b) intended to operate as a floor with no maximum limit or (c) merely supplementing the current cap.

In addition, in attempting to set the parameters for the number of stockholder-nominees that may be included in the Company's proxy statement via the Company's proxy access provision of the Amended Bylaws, the Proposal fails to establish the number of stockholder-nominees that may be allowed when the Board consists of 12 members. The Proposal addresses only the scenarios where the Board "has less than 12 members" and "has more than 12 members." The Proposal is silent as to the number of nominees that may be included where the Board has 12 members.

For the above reasons, the Proposal, in the words of the Staff, creates a situation where neither the Company nor the other stockholders "would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires" and is therefore impermissibly vague and indefinite under Rule 14a-8(i)(3).

*The Proposal and Supporting Statement Contain Statements that are Materially False and Misleading or are Irrelevant to a Consideration of the Subject Matter of the Proposal*

The Company believes that the statements identified below fall squarely within the circumstances set out in SLB 14B. Accordingly, the Company requests that the Staff concur that the Proposal and Supporting Statement may be excluded from the 2018 Proxy Materials because (a) they contain specific statements that are objectively and materially false or misleading and (b) substantial portions of the Supporting Statement are irrelevant to the subject matter of the Proposal and make unclear the nature of the matter on which stockholders are being asked to vote. The Staff has made it clear that a proposal "that will require detailed and extensive editing in order to bring . . . [it] into compliance with the proxy rules" may justify the exclusion of the entire proposal. See Staff Legal Bulletin No. 14 (July 13, 2001). To the extent the Staff does not concur that the Proposal and Supporting Statement may be excluded in their entirety, the Company requests that the Staff concur with the exclusion of the specific statements described below.

- *Statement that "[e]ven if the 20 largest public pension funds were able to aggregate their shares, they would not meet the current 3% criteria for a continuous 3-years at most companies according to the Council of Institutional Investors."*

The Supporting Statement provides that "[e]ven if the 20 largest public pension funds were able to aggregate their shares, they would not meet the current 3% criteria for a continuous 3-years at most companies according to the Council of Institutional Investors." The bases for and relevance of these statements for "most companies" and to the Company's stockholder base are unclear, outdated, and not supported by any Company-specific data. It appears that the statement cited in the Supporting Statement comes from an August 2015 publication by the Council for

Institutional Investors (CII) titled "Proxy Access: Best Practices." In that publication, CII stated that "[o]ur review of current research found that even if the 20 largest public pension funds were able to aggregate their shares they would not meet the 3% criteria at most of the companies examined." CII published an updated version of this publication in November 2017, titled "*Proxy Access: Best Practices 2017,*" which removed its generic citation to the 20 largest public pension funds and now "recognize[s] that a 20-shareholder cap has become the market standard."[1] Mr. Chevedden did not update his cited statistic or otherwise provide current support for its veracity. The Supporting Statement's inclusion of the CII statement misleads the Company's stockholders by suggesting not only that the Company's stockholder base includes the 20 largest public pension funds and thus makes the statement applicable to the Company, but also that such public pension funds have a financial stake in "most companies" in the first place. Without any Company-specific data, the Supporting Statement begs the Company's stockholders to create a connection based on an overly broad statement from an outdated publication and without evidence of any current support.

- *All Statements in the Proposal and Supporting Statement Related to the Company's Virtual Meeting of Stockholders.*

In addition, the Proposal and Supporting Statement devote more than half of their words to the Company's alleged "make-believe meeting" and falsely accuses the Company of taking away a stockholder right. For example, the Supporting Statement includes the following statement: "It is especially important to improve a shareholder right, such as proxy access, to make up for our management taking away an important shareholder right -- the right to an in-person annual meeting. We did not even have an opportunity to vote on giving up this right." This red herring conveniently ignores the fact that nothing about the Company's virtual annual meeting process affects stockholders' ability to take advantage of the proxy access provisions of the Amended Bylaws and has absolutely nothing to do with the Proposal's *actual* purpose. Neither Delaware law nor the Amended Bylaws grant to stockholders the right to attend an *in-person* annual meeting, as the Proposal would have the Company's stockholders believe. This and similar statements are irrelevant to the subject matter of the Proposal and serve only to provide the Proponents a platform to include in the Company's 2018 Proxy Materials the Proponents' same commentary regarding the Company's annual meeting process that was included in a stockholder proposal that was properly excluded from the Company's 2017 Proxy Materials pursuant to a no-action letter granted by the Staff in January 2017 pursuant to the "ordinary business" exclusion under Rule 14a-8(i)(7).

For the above reasons, the Company believes that the Proposal may properly be excluded under Rule 14a-8(i)(3) as impermissibly vague and indefinite so as to be materially false and misleading in violation of Rule 14a-9.

---

[1] *See* Council for Institutional Investors, *Proxy Access: Best Practices 2017*, available at http://www.cii.org/files/publications/misc/Proxy_Access_2017_FINAL.pdf.

## III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(10) and Rule 14a-8(i)(3). As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2018 Proxy Materials.

If we can be of further assistance in this matter, please do not hesitate to contact me at (949) 823-7968.

Sincerely,

Shelly A. Heyduk
of O'MELVENY & MYERS LLP

Attachments

cc: Mr. John Chevedden
Mr. John C. Harrington
Mr. Kyle Levine, Alaska Air Group, Inc.
Ms. Jennifer Thompson, Alaska Air Group, Inc.

# **Exhibit A**

See attached.

*** **JOHN CHEVEDDEN** ***

Ms. Jennifer Thompson
Corporate Secretary
Alaska Air Group, Inc. (ALK)
19300 International Blvd.
Seattle, WA 98188
PH: 206-392-5040
PH: 206-392-5102
FX: 206-392-5807

Dear Ms. Thompson,

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

Date

cc: Celia Watkins <Celia.Watkins@AlaskaAir.com>
PH: 206-431-7218
FX: 302-636-5454
Jeanne Gammon <Jeanne.Gammon@AlaskaAir.com>
Kyle Levine <kyle.levine@alaskaair.com>

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

[ALK – Rule 14a-8 Proposal, October 22, 2017]
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Assured Shareholder Proxy Access**

RESOLVED: Stockholders ask the board of directors to amend its proxy access bylaw provisions and any associated documents, to include the following changes for the purpose of decreasing the average amount of Company common stock the average member of a nominating group would be required to hold for 3-years to satisfy the aggregate ownership requirements to form a nominating group and to increase the possible number of proxy access director candidates:
No limitation shall be placed on the number of stockholders that can aggregate their shares to achieve the 3% of common stock required to nominate directors under our Company's proxy access provisions.

The number of shareholder-nominated candidates eligible to appear in proxy materials will not be less than 2 when our board has less than 12 members. The number of shareholder-nominated candidates eligible to appear in proxy materials will not be less than 3 when our board has more than 12 members.

Even if the 20 largest public pension funds were able to aggregate their shares, they would not meet the current 3% criteria for a continuous 3-years at most companies according to the Council of Institutional Investors. This proposal addresses the situation that our company now has with proxy access potentially for only the largest shareholders who are the least unlikely shareholders to make use of it.

It is especially important to improve a shareholder right, such as proxy access, to make up for our management taking away an important shareholder right – the right to an in-person annual meeting. We did not even have an opportunity to vote on giving up this right.

For decades shareholders of U.S. companies had a once-a-year opportunity to ask a $6 million CEO and directors questions in person. Now our directors can casually flip their phones to mute during the annual shareholder meeting.

Our management is now free to run a make-believe meeting with Investor Relations devising softball questions in advance while tossing out serious shareholder questions. Then our $6 million CEO can simply read the scripted IR answers to a microphone – no opportunity for live audience feedback. There is no auditor present to see if IR is trashing incoming shareholder questions.

The lack of an in-person annual meeting means that a board meeting can be scheduled months after the virtual meeting – by which time any serious issues raised by shareholders under these adverse conditions will be long forgotten by the directors. Plus a virtual meeting guarantees that there will be no media coverage for the benefit of shareholders.

A virtual meeting is a complacency plan for our directors and top management. Top management has no incentive to avoid making mistakes for 365 days of the year out of concern that there will be an in-person accounting at the annual meeting. Shareholders can vote against the $6 million paycheck of a CEO who refuses to answer shareholder questions in-person and acts like in-person contact with shareholders is a nuisance.

Please vote to improve proxy access to help make up for top management stripping away an important shareholder right:

**Assured Shareholder Proxy Access – Proposal [4]**

[The above line – *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(I)(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
***

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

**Exhibit B**

See attached.

## Jennifer Thompson

| | |
|---|---|
| **From:** | Jennifer Thompson |
| **Sent:** | Monday, October 23, 2017 8:23 AM |
| **To:** | *** |
| **Cc:** | Celia Watkins; Jeanne Gammon; Kyle Levine |
| **Subject:** | RE: Rule 14a-8 Proposal (ALK)`` |

Mr. Chevedden,

We have received your proposal regarding "Assured Shareholder Proxy Access." We will review it and let you know by November 5th if we find any discrepancies or procedural requirements that need to be addressed.

Sincerely,

**Jennifer Thompson**
Managing Director, Corporate Law
Associate General Counsel &
Assistant Corporate Secretary

P 206-392-5185 F 206-392-5468

jennifer.thompson@alaskaair.com
19300 International Blvd.
Seattle, WA 98188
alaskaair.com

This e-mail and any attachments may contain confidential and privileged information.
If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

**From:** ***
**Sent:** Sunday, October 22, 2017 4:39 PM
**To:** Jennifer Thompson <Jennifer.Thompson@AlaskaAir.com>
**Cc:** Celia Watkins <Celia.Watkins@AlaskaAir.com>; Jeanne Gammon <Jeanne.Gammon@AlaskaAir.com>; Kyle Levine <kyle.levine@alaskaair.com>
**Subject:** Rule 14a-8 Proposal (ALK)``

Dear Ms. Thompson,
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 large market capitalization of the company.
Sincerely,
John Chevedden

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

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

October 24, 2017

ALK

| Post-it® Fax Note 7671 | Date 10-24-17 # of pages ▶ |
|---|---|
| To Jennifer Thompson | From John Chevedden |
| Co./Dept. | Co. |
| Phone # | Phone *** |
| Fax # 216-392-5807 | Fax # |

John R. Chevedden
***

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

| Security name | CUSIP | Trading symbol | Share quantity |
|---|---|---|---|
| Alaska Air Group, Inc. | 011659109 | ALK | 100 |
| AMN Healthcare Services, Inc. | 001744101 | AMN | 200 |
| Air Transport Services Group, Inc. | 00922R105 | ATSG | 200 |
| JP Morgan Chase & Co. | 46625H100 | JPM | 100 |
| Occidental Petroleum Corporation | 674599105 | OXY | 50 |

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

George Stasinopoulos
Personal Investing Operations

Our File: W377095-24OCT17

Fidelity Brokerage Services LLC, Members NYSE, SIPC.

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

**Jennifer Thompson**

| | |
|---|---|
| **From:** | Jennifer Thompson |
| **Sent:** | Wednesday, October 25, 2017 8:31 AM |
| **To:** | *** |
| **Cc:** | Celia Watkins; Jeanne Gammon; Kyle Levine |
| **Subject:** | RE: Rule 14a-8 Proposal (ALK) blb |

Dear Mr. Chevedden,
We confirm receipt.
Thank you,
Jenn

Jennifer Thompson
Managing Director, Corporate Law
Associate General Counsel &
Assistant Corporate Secretary

P 206-392-5165 F 206-392-5468

jennifer.thompson@alaskaair.com
19300 International Blvd.
Seattle, WA 98188
alaskaair.com

This e-mail and any attachments may contain confidential and privileged information.
If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

-----Original Message-----
From: ***
Sent: Tuesday, October 24, 2017 6:26 PM
To: Jennifer Thompson <Jennifer.Thompson@AlaskaAir.com>
Cc: Celia Watkins <Celia.Watkins@AlaskaAir.com>; Jeanne Gammon <Jeanne.Gammon@AlaskaAir.com>; Kyle Levine <kyle.levine@alaskaair.com>
Subject: Rule 14a-8 Proposal (ALK) blb

Dear Ms. Thompson,
Please see the attached broker letter.
Sincerely,
John Chevedden

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

## Jennifer Thompson

| | |
|---|---|
| **From:** | Jennifer Thompson |
| **Sent:** | Tuesday, October 31, 2017 2:46 PM |
| **To:** | *** |
| **Cc:** | Kyle Levine; Jeanne Gammon |
| **Subject:** | 14a-8 Shareholder Proposal - Harrington Investments |
| **Attachments:** | 10-31-17 Harrington CoFile Chevedden Proposal.pdf |

Dear Mr. Chevedden,
We confirm receipt of correspondence from co-filer, Harrington Investments, relating to your previously submitted shareholder proposal concerning "Assured Shareholder Proxy Access." We will review and advise of any deficiencies by November 5, 2017.
Sincerely,

**Jennifer Thompson**
Managing Director, Corporate Law
Associate General Counsel &
Assistant Corporate Secretary

P 206-392-5165 F 206-392-5468

jennifer.thompson@alaskaair.com
19300 International Blvd.
Seattle, WA 98188
alaskaair.com

This email and any attachments may contain confidential and privileged information.
If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

October 26, 2017

RECEIVED
OCT 31 2017
CORPORATE AFFAIRS

Corporate Secretary
Alaska Air Group, Inc.
P.O. Box 68947
Seattle, WA 98168

**RE: Shareholder Proposal**

Dear Corporate Secretary,

As a shareholder in Alaska Air Group, Inc. I, representing Harrington Investments, Inc. (HII), am co-filing the enclosed shareholder resolution pursuant to Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 for inclusion in the Company's Proxy Statement for the 2018 annual meeting of shareholders.

For this proposal, John Chevedden will act as the lead filer and HII will act as the co-filer.

HII is the beneficial owner of at least $2,000 worth of Alaska Air Group, Inc. Company stock. HII has held the requisite number of shares for over one year, and plan to hold sufficient shares in the Alaska Air Group, Inc. Company through the date of the annual shareholders' meeting. In accordance with Rule 14a-8 of the Securities Exchange Act of 1934, verification of ownership is included, separately. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required by SEC rules.

If you would like to discuss this proposal, please contact John Chevedden.
If you have any questions, I can be contacted at (707) 252-6166.

Sincerely,

John C. Harrington

President and C.E.O.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW.HARRINGTONINVESTMENTS.COM

October 26, 2017

Corporate Secretary
Alaska Air Group, Inc.
P.O. Box 68947
Seattle, WA 98168

RE: Account XXXX ***
Harrington Investments, Inc.
1001 2nd Street, Suite 325
Napa, CA

Dear Corporate Secretary:

This letter is to confirm that Charles Schwab is the record holder for the beneficial owner of the Harrington Investments, Inc. Corporate account and which holds in the account 100 shares of common stock in Alaska Air Group (ALK). These shares have been held continuously for at least one year prior to and including October 26, 2017.

The shares are held at Depository Trust Company under the Participant Account Name of Charles Schwab & Co., Inc., number 0164.

**This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.**

Should additional information be needed, please feel free to contact me directly at 877-393-1951 between the hours of 11:30am and 8:00pm EST.

Sincerely,

Melanie Salazar
Advisor Services
Charles Schwab & Co. Inc.

## <u>Exhibit C</u>

See attached.

# AMENDED AND RESTATED BYLAWS
# OF
# ALASKA AIR GROUP, INC.

As Amended and in Effect December 9, 2015
(Date of Previous Amendment: April 30, 2010)

## ARTICLE I.
## REGISTERED OFFICE AND AGENT

The registered office of the corporation is located at Corporation Service Company, 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Delaware 19808, and the name of its registered agent at such address is Corporation Service Company.

## ARTICLE II.
## STOCKHOLDERS

Section 1. Annual Meetings.

A meeting of stockholders 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 annually at such date and time as shall be fixed by resolution of the Board of Directors. If the day fixed for the annual meeting of stockholders shall be a legal holiday such meeting shall be held on the next succeeding business day.

Section 2. Special Meetings.

Special meetings of stockholders for any purpose or purposes may be called at any time by a majority of the Board of Directors or by the Chairman of the Board and shall be called by the Board of Directors upon written request to the Secretary of one or more holders of record owning not less than 10% of the total number of shares of the corporation entitled to vote on the matter or matters to be brought before the proposed special meeting. A stockholder request for a special meeting shall be directed to the Secretary and shall be signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting, and shall be accompanied by a written notice setting forth the information required by Section 9 of this Article II as to the business proposed to be conducted and any nominations proposed to be presented at the special meeting and as to the stockholder(s) proposing such business or nominations. A special meeting requested by stockholders in accordance with this Section 2 shall be held at such date, time and place within or without the State of Delaware as may be designated by the Board of Directors; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the request to call the special meeting is received by the Secretary. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if (i) the stated business to be brought before the special meeting is not a proper subject for stockholder action under applicable law, or (ii) the Board of Directors has called or calls for an annual meeting of stockholders to be held within ninety (90) days after the Secretary receives the request for the special meeting and the Board of Directors determines

in good faith that the business of such annual meeting includes (among any other matters properly brought before the annual meeting) the business specified in the special meeting request. A stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Secretary; provided, however, that if, following such revocation, there are unrevoked requests from stockholders holding in the aggregate less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board of Directors, in its discretion, may cancel the special meeting. Business transacted at a special meeting requested by stockholders shall be limited to the matters described in the special meeting request; provided, however, that nothing herein shall prohibit the Board of Directors from submitting additional matters to the stockholders at any special meeting requested by stockholders.

Section 3. Place of Meetings.

All meetings of stockholders may be held at such places within or without the State of Delaware as shall be designated by the Board of Directors and stated in the notice of the meeting. In lieu of holding a meeting of stockholders at a designated place, the Board of Directors, in its sole discretion, may determine that any meeting of stockholders may be held solely by means of remote communications.

Section 4. Notice of Meetings.

Except as otherwise provided by statute, notice of each meeting of stockholders shall be given not less than ten (10) and not more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Such notice shall state the place, if any (or the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at the meeting), date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting) and, in the case of a special meeting, the general nature of the business to be transacted (no business other than that specified in the notice may be transacted). The notice of any meeting at which Directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the Board of Directors for election.

When a meeting is adjourned to another time and place (if any), notice of the adjourned meeting need not be given if the time and place (if any) thereof and the means of remote communications (if any) by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is given. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting in accordance with Section 3 of Article VI of these Bylaws, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting as of the record date fixed for notice of the meeting.

Section 5. Quorum.

At any meeting of stockholders, the holders of record of a majority of the total number of shares of outstanding stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by statute or the Certificate of Incorporation.

If a quorum is present at any meeting of stockholders, the affirmative vote of the holders of a majority of the stock present in person or represented by proxy and entitled to vote on the subject matter shall be the act of the stockholders, except as otherwise expressly provided in the Certificate of Incorporation, these Bylaws or applicable law. Each Director shall be elected by the vote of a majority of the votes cast with respect to the Director's election at any meeting of stockholders for the election of Directors at which a quorum is present, provided that if, as of the tenth (10$^{th}$) day preceding the date the notice of the meeting is first sent to the stockholders of the corporation, the number of nominees exceeds the number of Directors to be elected (a "Contested Election"), the Directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of Directors. For purposes of clarity, it is stated that the provisions of the foregoing sentence do not apply to vacancies and newly created directorships filled by a vote of the Board of Directors under Section 2 of Article III of these Bylaws. For purposes of this Section 5, a majority of the votes cast means that the number of shares voted "for" a Director's election exceeds the number of votes cast "against" that Director's election (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that Director's election). In order for a nominee who already serves as a Director to become a nominee of the Board of Directors for further service on the Board of Directors, the Director shall have tendered, prior to the mailing of the proxy statement for the annual or special meeting at which he or she is to be nominated for election as a Director, an irrevocable resignation in accordance with Section 141(b) of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law") that is contingent on (i) that person not receiving a majority of the votes cast in an election that is not a Contested Election, and (ii) acceptance of that resignation by the Board of Directors in accordance with policies and procedures adopted by the Board of Directors for that purpose. In the event a nominee who already serves as a Director fails to receive a majority of the votes cast in an election that is not a Contested Election, the Governance and Nominating Committee, or such other committee designated by the Board of Directors pursuant to these Bylaws, will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken. The Board of Directors will act on the committee's recommendation and publicly disclose its decision and the rationale behind it within ninety (90) days from the date of certification of the election results. The committee in making its recommendation and the Board of Directors in making its decision may each consider any factors and other information that they consider appropriate and relevant. The Director who tenders his or her resignation will not participate in the Board of Directors' decision with respect to whether to accept or reject his or her resignation. If the Board of Directors accepts a Director's resignation pursuant to this Section 5, or if a nominee for Director is not elected and the nominee does not already serve as a Director, then the Board of Directors may fill the resulting vacancy in accordance with the provisions of these Bylaws or may decrease the size of the Board of

Directors in accordance with the provisions of these Bylaws. Directors shall hold office until the next annual meeting of stockholders and until their successors shall be duly elected.

In the absence of a quorum at any meeting, (i) the chairman of the meeting or (ii) the holders of a majority of the stock entitled to vote, present in person or represented by proxy at the meeting, may adjourn the meeting, from time to time in accordance with Section 8 of this Article II, until the holders of the number of shares requisite to constitute a quorum shall be present in person or represented at the meeting.

Section 6. Organization.

At each meeting of stockholders, the Chairman of the Board, or in his or her absence such person as shall have been designated by the Board of Directors, or in the absence of such designation a person elected by the holders of the majority in number of shares of stock present in person or represented by proxy and entitled to vote, shall act as chairman of the meeting.

The Secretary, or in his or her absence, an Assistant Secretary or, in the absence of the Secretary and all of the Assistant Secretaries, any person appointed by the chairman of the meeting, shall act as secretary of the meeting.

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 such meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules or regulations for the conduct of meetings 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 chairman of any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, 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 chairman of the meeting, may include, without limitation, (i) establishing 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 participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies, and such other persons as the chairman will permit, (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 chairman of the meeting, 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 the chairman should so determine, 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 chairman of the meeting, meetings of stockholders will not be required to be held in accordance with rules of parliamentary procedure.

Section 7. Voting.

The stockholders entitled to vote at any meeting of stockholders shall be only persons in whose name shares stand on the stock records of the corporation on the record date for the

determination of stockholders entitled to vote at such meeting fixed in accordance with Section 3 of Article VI of these Bylaws. Unless otherwise provided in the Certificate of Incorporation or as required by law, at each meeting of stockholders, each holder of shares entitled to vote at such meeting shall be entitled to one vote for each share of stock having voting power in respect of each matter upon which a vote is to be taken. Shares of its own capital stock belonging to the corporation, or to another corporation if a majority of the shares entitled to vote in the election of Directors of such other corporation is held by the corporation, shall neither be entitled to vote nor counted for quorum purposes.

Section 8. Adjournment.

Any meeting of stockholders, annual or special, whether or not a quorum is present, may be adjourned for any reason from time to time by either (i) the chairman of the meeting or (ii) the stockholders by the vote of the holders of a majority of the stock entitled to vote, present in person or represented by proxy at the meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

Section 9. Notification of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders. Nominations for the election of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (1) pursuant to the corporation's notice of meeting, (2) by or at the direction of the Board of Directors, (3) by any stockholder of the corporation who is a stockholder of record at the time of giving the notice required by this Section 9, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 9, or (4) by any stockholder of the corporation who meets the requirements of and complies with the procedures set forth in Section 10 of this Article II. For any nominations or other proposed business to be properly brought before an annual meeting of stockholders pursuant to this Section 9, the stockholder shall have given timely notice thereof in writing to the Secretary setting forth the information required by this Section 9 and any such proposed business (other than nominations for the election of Directors) must constitute a proper matter for stockholder action. To be timely, written notice of such stockholder's intent to make such nominations or propose such business pursuant to this Section 9 must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth ($90^{th}$) day, nor earlier than the close of business on the one hundred twentieth ($120^{th}$) day, prior to the first anniversary of 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 (30) days before or more than seventy (70) 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 ($120^{th}$) day prior to such annual meeting, nor later than the close of business on the later of the ninetieth ($90^{th}$) day prior to such annual meeting or the tenth ($10^{th}$) day following the date of the first public disclosure, which may include any public filing by the corporation with the Securities and Exchange Commission (the "SEC"), of the Originally Scheduled Date of such meeting. Notwithstanding anything to the contrary in the immediately preceding sentence, in the event that the number of Directors to be elected to the Board of Directors of the corporation is increased effective at the annual meeting of stockholders and there is no public disclosure by the

corporation (which may include any public filing by the corporation with the SEC) naming the nominees for any additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting of stockholders, 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 (10th) day following the date on which such public disclosure is first made by the corporation.

A stockholder's notice required by this Section 9 shall set forth (1) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (a) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (b) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and a representation that the stockholder will notify the corporation in writing of the class and number of such shares owned by such stockholder and beneficial owner as of the record date for determination of stockholders entitled to vote at the meeting no later than the earlier of five (5) days following the record date for determination of stockholders entitled to vote at the meeting or the opening of business on the date of the meeting; (c) a representation that the stockholder is a holder of record entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination or proposal; (d) a description of any agreement, arrangement or understanding with respect to such nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others (including their names) acting in concert with any of the foregoing, and a representation that such stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for determination of stockholders entitled to vote at the meeting no later than the earlier of five (5) days following the record date for determination of stockholders entitled to vote at the meeting or the opening of business on the date of the meeting; (e) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, hedging transactions, convertible securities, stock appreciation or similar rights and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and/or beneficial owner, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of such stockholder or beneficial owner with respect to shares of stock of the corporation, and a representation that the stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for determination of stockholders entitled to vote at the meeting no later than the earlier of five (5) days following the record date for determination of stockholders entitled to vote at the meeting or the opening of business on the date of the meeting; (f) a representation whether such stockholder and/or beneficial owner intends, or is part of a group which intends, to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding shares required to elect the nominee or adopt the proposal and/or otherwise to solicit proxies from stockholders in support of such nomination or proposal; and (g) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of

proxies for the election of Directors in an election contest pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder; (2) as to each person whom the stockholder proposes to nominate for election as Director (a) such information regarding each nominee as would have been required to be included in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of Directors in an election contest, or is otherwise required had each nominee been nominated by the Board of Directors, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, (b) the written consent of each nominee to being named in the proxy statement as a nominee and to serve as a Director if elected, and (c) a completed and signed questionnaire, representation and agreement required by paragraph (C) of this Section 9; and (3) 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 Bylaws 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. The foregoing notice requirements of this Section 9 shall be deemed satisfied by a stockholder with respect to business other than a Director nomination if the stockholder has notified the corporation of his, her or its intention to present a proposal at an annual meeting of stockholders in compliance with applicable rules and regulations 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.

(B) Special Meetings of Stockholders. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which Directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the Board of Directors or (2) by any stockholder of the corporation who is a stockholder of record at the time the notice required by this Section 9 is delivered to the Secretary, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 9. Nominations by stockholders of persons for election as Directors may be made at any special meeting called pursuant to Section 2 of this Article II if written notice of such stockholder's intent to make such nominations is received by the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120$^{th}$) day prior to such special meeting, nor later than the close of business on the later of the ninetieth (90$^{th}$) day prior to such special meeting or the tenth (10$^{th}$) day following the date of the first public disclosure, which may include any public filing by the corporation with the SEC, of the Originally Scheduled Date of such meeting, and such notice sets forth the information required by paragraph (A) of this Section 9.

A stockholder may propose other business at a special meeting of stockholders only in accordance with Section 2 of this Article II.

(C) Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a Director of the corporation, each person whom a stockholder proposes to nominate for election as Director must have previously delivered (in

accordance with the time periods prescribed for delivery of notice under this Section 9), to the Secretary at the principal executive offices of the corporation, (1) a completed written questionnaire (in a form provided by the corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee and (2) a written representation and agreement (in a form provided by the corporation) that such candidate for nomination (a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a Director of the corporation, will act or vote on any issue or question in his or her capacity as a director (a "Voting Commitment") that has not been disclosed to the corporation or (ii) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a Director of the corporation, with such proposed nominee's fiduciary duties under applicable law, (b) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation or reimbursement for service as a Director that has not been disclosed therein and (c) if elected as a Director of the corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the corporation applicable to Directors and in effect during such person's term in office as a Director (and, if requested by any candidate for nomination, the Secretary of the corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

(D) General. Only such persons who are nominated in accordance with the procedures set forth in this Section 9 or Section 10 of this Article II shall be eligible to be elected at an annual or, in the case of persons nominated in accordance with this Section 9, a special meeting of stockholders of the corporation to serve as Directors and only such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9. The chairman of any meeting of stockholders to elect Directors and the Board of Directors shall refuse to recognize the nomination of any person or the proposal of any business not made in compliance with the foregoing procedures.

Notwithstanding the foregoing provisions of this Section 9, unless otherwise required by law, 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 the nomination or proposed 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. For purposes of this Section 9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or transmission, at the meeting of stockholders.

In addition, 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 promulgated thereunder with respect to the matters set forth in this Section 9;

provided, however, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 9 (including paragraphs (A) and (B) hereof), and compliance with paragraphs (A) and (B) of this Section 9 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the last sentence of paragraph (A), matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act and other than as provided in Section 10 of this Article II). Nothing in this Section 9 shall be deemed to affect any rights (1) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (2) of the holders of any series of preferred stock, if any, to elect Directors pursuant to any applicable provisions of the Certificate of Incorporation.

For purposes of this Section 9, the "Originally Scheduled Date" of any meeting of stockholders shall be the date such meeting is scheduled to occur in the notice first given to stockholders regardless of whether such meeting is continued or adjourned or whether any subsequent notice is given for such meeting or the record date of such meeting is changed.

Section 10. Proxy Access for Director Nominations.

(A) Notwithstanding anything to the contrary in these Bylaws, whenever the Board of Directors solicits proxies with respect to the election of Directors at an annual meeting of stockholders, subject to the provisions of this Section 10, the corporation shall include in its proxy statement, form of proxy card and other applicable documents or filings with the SEC required in connection with the solicitation of proxies for the election of Directors for such annual meeting (the "corporation's proxy materials"), in addition to any persons nominated for election by the Board of Directors or any committee thereof, the name of any person nominated for election to the Board of Directors pursuant to this Section 10 (the "Stockholder Nominee") by an Eligible Stockholder (as defined below), and will include in its proxy statement for the annual meeting of stockholders the Required Information (as defined below), if the Eligible Stockholder satisfies the requirements of this Section 10 and expressly elects at the time of providing the notice required by this Section 10 (the "Notice of Proxy Access Nomination") to have its Stockholder Nominee(s) included in the corporation's proxy materials pursuant to this Section 10.

(B) To qualify as an "Eligible Stockholder," a stockholder or an eligible group of no more than 20 stockholders must have owned (as defined below) the Required Ownership Percentage (as defined below) of the corporation's outstanding common stock (the "Required Shares") continuously for the Minimum Holding Period (as defined below) as of both the date the Notice of Proxy Access Nomination is delivered to the Secretary of the corporation in accordance with this Section 10 and the close of business on the record date for determining the stockholders entitled to vote at the annual meeting of stockholders, and thereafter must continue to own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof). For purposes of this Section 10, the "Required Ownership Percentage" is 3% or more and the "Minimum Holding Period" is 3 years.

In the event the Eligible Stockholder consists of a group of 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 Required Ownership Percentage shall apply to the ownership of the group in the aggregate. No person may be a member of more than one group of persons constituting an Eligible Stockholder for purposes of nominations pursuant to this Section 10 with respect to an annual meeting of stockholders. In addition, a group of any two or more funds that are under common management and investment control shall be treated as one stockholder for purposes of forming a group to qualify as an Eligible Stockholder. Whenever an Eligible Stockholder consists of a group of more than one stockholder, each provision in this Section 10 that requires the Eligible Stockholder to provide any written statements, representations, undertakings or agreements or to meet any other conditions shall be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings or agreements and to meet such other conditions (which, if applicable, shall apply with respect to the portion of the Required Shares owned by such stockholder). When an Eligible Stockholder is comprised of a group, a violation of any provision of this Section 10 by any member of the group shall be deemed a violation by the entire group.

For purposes of this Section 10, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the corporation as to which the stockholder possesses both: (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument, agreement or arrangement entered into by such stockholder or any of its affiliates, whether any such instrument, agreement or arrangement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the corporation, in any such case which instrument, agreement or arrangement has, or is intended to have, or if exercised by either party would have, the purpose or effect of (i) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares, and/or (ii) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or its affiliates. An Eligible Stockholder shall "own" shares of common stock held in the name of a nominee or other intermediary so long as the 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. A stockholder's ownership of shares of common stock shall be deemed to continue during any period in which (1) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on three business days' notice and provides a representation to the corporation that it will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the corporation's proxy materials, or (2) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms

"owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof, in each case, in its sole discretion. For purposes of this Section 10, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under rules and regulations promulgated under the Exchange Act. An Eligible Stockholder shall include in its Notice of Proxy Access Nomination the number of shares it is deemed to own for purposes of this Section 10.

(C) For purposes of this Section 10, the "Required Information" that the corporation will include in its proxy statement is (1) the information provided to the Secretary of the corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement by applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder, and (2) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder, not to exceed 500 words, in support of the candidacy of the Stockholder Nominee(s), which must be delivered to the Secretary of the corporation at the time the Notice of Proxy Access Nomination required by this Section 10 is delivered (the "Statement"). Notwithstanding anything to the contrary contained in this Section 10, the corporation may omit from its proxy statement any information or Statement (or portion thereof) that it, in good faith, believes is untrue in any material respect (or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 10 shall limit the corporation's ability to solicit against and include in the corporation's proxy materials its own statements or other information relating to the Eligible Stockholder or any Stockholder Nominee.

(D) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the corporation's proxy materials with respect to an annual meeting of stockholders shall be the greater of (1) 20% of the total number of Directors in office (rounded down to the nearest whole number) as of the last day on which a Notice of Proxy Access Nomination may be timely delivered pursuant to and in accordance with this Section 10 (the "Final Proxy Access Nomination Date"), or (2) two. In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees eligible for inclusion in the corporation's proxy materials pursuant to this Section 10 shall be calculated based on the number of Directors in office as so reduced. Any individual nominated by an Eligible Stockholder for inclusion in the corporation's proxy materials pursuant to this Section 10 whom the Board of Directors decides to nominate as a nominee of the Board of Directors, and any individual nominated by an Eligible Stockholder for inclusion in the corporation's proxy materials pursuant to this Section 10 but whose nomination is subsequently withdrawn, shall be counted as one of the Stockholder Nominees for purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 10 has been reached. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 10 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials in the event that the

total number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 10 exceeds the maximum number of nominees provided for in this Section 10. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 10 exceeds the maximum number of nominees provided for in this Section 10, the highest ranking Stockholder Nominee who meets the requirements of this Section 10 from each Eligible Stockholder will be selected for inclusion in the corporation's proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of the corporation's outstanding common stock each Eligible Stockholder disclosed as owned in its respective Notice of Proxy Access Nomination submitted to the corporation. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 10 from each Eligible Stockholder has been selected, this process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

(E) To be eligible to have its nominee included in the corporation's proxy materials pursuant to this Section 10, an Eligible Stockholder shall have timely delivered, in proper form, a Notice of Proxy Access Nomination to the Secretary. To be timely, the Notice of Proxy Access Nomination must be addressed to the Secretary of the corporation and delivered to the Secretary of the corporation at the principal executive offices of the corporation in proper form not later than the close of business on the one hundred twentieth ($120^{th}$) day, nor earlier than the close of business on the one hundred fiftieth ($150^{th}$) day, prior to the first anniversary of the date the definitive proxy statement was first released to stockholders in connection with 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 (30) days before or more than seventy (70) days after such anniversary date, notice by an Eligible Stockholder must be so delivered not earlier than the close of business on the one hundred fiftieth ($150^{th}$) day prior to such annual meeting, nor later than the close of business on the later of the one hundred twentieth ($120^{th}$) day prior to such annual meeting or the tenth ($10^{th}$) day following the date of the first public disclosure, which may include any public filing by the corporation with the SEC, of the Originally Scheduled Date (as defined in Section 9) of such meeting.

(F) To be in proper form for purposes of this Section 10, the Notice of Proxy Access Nomination to the Secretary must be in writing and shall include the following information:

(1) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is delivered to the Secretary of the corporation, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting of stockholders, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date, together with a written statement by the Eligible Stockholder that such Stockholder will continue to own the Required Shares through the date of such annual meeting (and any postponement or adjournment thereof);

(2) a copy of the Schedule 14N that has been or concurrently is filed with the SEC as required by Rule 14a-18 under the Exchange Act, as such rule may be amended;

(3) the information, representations and agreements that are the same as those that would be required to be set forth in a stockholder's notice of nomination pursuant to Section 9(A) of this Article II;

(4) the questionnaire, representations, agreements and other information required by Section 9(C) of this Article II;

(5) the consent of each Stockholder Nominee to being named in the corporation's proxy materials as a nominee and to serving as a Director if elected;

(6) a representation that the Eligible Stockholder (a) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the corporation, and that neither the Eligible Stockholder nor any Stockholder Nominee being nominated thereby presently has such intent, (b) intends to continue to own the Required Shares for at least one year following the date of the annual meeting of stockholders, (c) has not nominated and will not nominate for election to the Board of Directors at the annual meeting of stockholders any person other than its Stockholder Nominee(s) being nominated pursuant to this Section 10, (d) has not engaged and will not engage in, and has not and will not be a "participant" in, another person's "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a Director at the annual meeting of stockholders, other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (e) will not distribute to any stockholder of the corporation any form of proxy for the annual meeting of stockholders other than the form distributed by the corporation, and (f) has not provided and will not provide facts, statements and other information in its communications with the corporation and its stockholders that are not or will not be true and correct in all material respects or which omitted or will omit to state a material fact necessary in order to make such information, in light of the circumstances under which it is or will be made or provided, not misleading;

(7) an undertaking that the Eligible Stockholder agrees to: (a) assume all liability stemming from any legal or regulatory violation arising out of communications with the stockholders of the corporation by the Eligible Stockholder, its affiliates and associates or their respective agents or representatives, either before or after providing a Notice of Proxy Access Nomination pursuant to this Section 10, or out of the information that the Eligible Stockholder or its Stockholder Nominee(s) provided to the corporation pursuant to this Section 10 or otherwise in connection with the inclusion of such Stockholder Nominee(s) in the corporation's proxy materials pursuant to this Section 10, (b) indemnify and hold harmless the corporation and each of its Directors, officers and employees individually against any liability, loss or damages 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 any nomination submitted by the Eligible Stockholder pursuant to this Section 10, (c) comply with all applicable laws and regulations with respect to any solicitation, or applicable to the filing and use, if any, of soliciting material, in connection with the annual meeting of stockholders, and (d) file with the SEC any solicitation or other communication with

the corporation's stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available thereunder; and

(8) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including withdrawal of the nomination.

The corporation may also require each Eligible Stockholder and Stockholder Nominee to furnish such additional information as may reasonably be necessary to permit the Board of Directors to determine if each Stockholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the common stock of the corporation is listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's Directors or as may reasonably be required by the corporation to determine that the Eligible Stockholder meets the criteria for qualification as an Eligible Stockholder.

(G) In the event that any facts, statements or other information provided by the Eligible Stockholder or the Stockholder Nominee to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true and correct in all material respects or omits a material fact necessary to make such information, in light of the circumstances under which it is made or provided, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the corporation of any defect in such previously provided information and of the information that is required to correct any such defect; it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 10.

(H) The corporation shall not be required to include, pursuant to this Section 10, a Stockholder Nominee in the corporation's proxy materials for any meeting of stockholders (1) for which the Secretary of the corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for Director set forth in Section 9 of this Article II, (2) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in, another person's "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a Director at the annual meeting of stockholders other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (3) if such Stockholder Nominee is not independent under the listing standards of each principal U.S. exchange upon which the common stock of the corporation is listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the corporation's Directors, in each case as determined by the Board of Directors in its sole discretion, (4) if the election of such Stockholder Nominee as a member of the Board of Directors would cause the corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal U.S. exchange upon which the common stock of the corporation is traded, or any applicable state or federal law, rule or regulation, (5) if such Stockholder

Nominee is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (6) if such Stockholder Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (7) if such Stockholder Nominee is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (8) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading, as determined by the Board of Directors or any committee thereof, in each case, in its sole discretion, or (9) if the Eligible Stockholder who has nominated such Stockholder Nominee or such Stockholder Nominee otherwise contravenes any of the agreements or representations made by such Eligible Stockholder or Stockholder Nominee or fails to comply with its obligations pursuant to this Section 10.

(I) Notwithstanding the foregoing provisions of this Section 10, unless otherwise required by law, if (1) the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have breached its or their obligations under this Section 10, as determined by the Board of Directors or the chairperson of the meeting of stockholders, in each case, in its, his or her sole discretion, or (2) the Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting of stockholders to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 10, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or transmission, at the meeting of stockholders.

(J) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but either (1) withdraws from or becomes ineligible or unavailable for election to the Board of Directors at such annual meeting, or (2) does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election at such annual meeting, will be ineligible to be a Stockholder Nominee pursuant to this Section 10 for the next two annual meetings of stockholders. For the avoidance of doubt, this Section 10(j) shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with Section 9 of this Article II.

(K) This Section 10 shall be the exclusive method for stockholders to include nominees for election to the Board of Directors in the corporation's proxy materials.

# ARTICLE III.
# BOARD OF DIRECTORS

Section 1. Number, Qualification and Term of Office.

A majority of the members of the Board of Directors shall not be employees of the corporation. These Bylaws shall not be amended to change the requirement for a majority of outside Directors unless approved by a vote of the stockholders, or by a vote of a majority of the outside Directors, but in no case prior to September 14, 1995. The number, qualification and term of office of the Directors shall be as set forth in the Certificate of Incorporation.

Section 2. Vacancies.

Vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of Directors may be filled by a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director, at any regular or special meeting of the Board of Directors.

Section 3. Resignations.

Any Director may resign at any time upon notice in writing or by electronic transmission to the corporation. Such resignation shall take effect when the notice is delivered or at any later date specified therein; and the acceptance of such resignation shall not be necessary to make it effective. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 4. Meetings.

Meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board, the President, the Chief Executive Officer or a majority of the Board of Directors. The Board of Directors may hold its regular meetings at such place within or without the State of Delaware as the Chairman of the Board or in his or her absence a majority of Directors from time to time may determine. Special meetings of the Board of Directors may be held at any place within or without the State of Delaware as designated in the notice of meeting.

Regular meetings of the Board of Directors may be held without notice if the time and place of such meetings are fixed by the Board of Directors. Notice of each special meeting shall be given by the Chairman of the Board, the Chief Executive Officer, the Secretary or any Assistant Secretary or their delegates to each Director by mail at least four (4) days prior to the time fixed for the meeting, or personally or by telephone, facsimile transmission, electronic mail or other means of electronic transmission at least twenty-four (24) hours prior to the time fixed for the meeting, unless, in case of exigency, the Chairman of the Board shall prescribe a shorter notice. Notice of a meeting need not be given to a Director (i) who waives (in writing or by electronic transmission) notice of or consents to holding of the meeting or approves the minutes thereof, whether before or after the time of the meeting, or (ii) who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. The notice of meeting shall state the time and place of the meeting. Neither the business to be transacted at,

nor the purpose of, any special meeting of the Board need be specified in the notice or waiver of notice of such meeting.

Section 5. Quorum and Manner of Acting.

Except as otherwise provided by statute, the Certificate of Incorporation, or these Bylaws, the presence of a majority of the total number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the act of a majority of the Directors present at any such meeting at which a quorum is present shall be the act of the Board of Directors. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time or place. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting will be given before the adjournment meeting takes place, in the manner specified in Section 4 of this Article III, to the Directors who were not present at the time of the adjournment.

Section 6. Organization.

At every meeting of the Board of Directors, the Chairman of the Board or in his or her absence, a chairman chosen by a majority of the Directors present shall act as chairman of the meeting. The Secretary, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all the Assistant Secretaries, any person appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 7. Consent of Directors in Lieu of Meeting.

Unless otherwise restricted by the Certificate of Incorporation or by these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee designated by the Board, may be taken without a meeting if all members of the Board or committee consent thereto in writing or by electronic transmission, and such written consent or transmission is filed with the minutes of the proceedings of the Board or committee.

Section 8. Telephonic Meetings.

Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting.

## ARTICLE IV.
## COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. Committees.

The corporation hereby elects to be governed by Section 141(c)(2) of the Delaware General Corporation Law. The Board of Directors may, by resolution passed by a majority of the Directors, designate one or more committees, consisting of one or more Directors, as it may from time to time determine, and each such committee shall serve for such term and shall have

and may exercise such duties, functions and powers which are not inconsistent with applicable law as the Board of Directors may from time to time prescribe. The Chairman of each such committee shall be designated by the Board of Directors.

Section 2. Meetings; Books and Records.

Meetings and actions of committees will be governed by, and held and taken in accordance with, the provisions of Article III of these Bylaws applicable to meetings and actions of the Board, with such changes in the context of such sections of these Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members; provided, however, that the time and date of regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee, and that special meetings of committees may also be called by resolution of the Board of Directors. Each committee shall keep a record of its acts and proceedings, and all actions of the committee shall be reported to the Board of Directors at the next meeting of the Board.

Section 3. Quorum and Manner of Action.

At each meeting of any committee the presence of a majority of the members of such committee shall be necessary to constitute a quorum for the transaction of business, and if a quorum is present the concurrence of a majority of those present shall be necessary for the taking of any action.

## ARTICLE V.
## OFFICERS

Section 1. Number.

The officers of the corporation shall be a Chairman of the Board, a President, a Chief Financial Officer, a Secretary, and such other officers, including but not limited to a Treasurer, as may be elected by the Board of Directors. In addition to officers elected by the Board of Directors in accordance with the foregoing sentence, the corporation may have one or more appointed Vice Presidents, Assistant Secretaries, Assistant Treasurers or other officers as may be designated from time to time and appointed by the Board of Directors or the Chairman of the Board. Any number of offices may be held by the same person.

Section 2. Election, Term of Office and Qualifications.

The officers of the corporation shall serve at the pleasure of the Board of Directors and shall hold office until his or her successor shall have been duly elected and qualified, or until he or she shall have died, resigned or been removed in the manner hereinafter provided.

Section 3. Resignations.

Any officer may resign at any time upon written notice to the corporation without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party. Such resignation shall take effect on the date of its receipt, or on any later date specified therein; and the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removals.

Any officer elected or appointed by the Board of Directors may be removed, with or without cause, by the Board of Directors. Any officer appointed by the Chairman of the Board may be removed, with or without cause, by the Chairman of the Board or the Board of Directors. In either case, an officer's removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5. Vacancies.

Any vacancy occurring in any office of the corporation shall be filled for the unexpired portion of the term in the same manner as prescribed in these Bylaws for regular election or appointment to such office.

Section 6. Compensation of Officers.

Subject to applicable law, the compensation of all officers elected by the Board of Directors shall be approved or authorized by the Board of Directors, by a committee of the Board of Directors to whom such authority has been delegated or by the Chairman of the Board when so authorized by the Board of Directors, and the compensation of all officers appointed by the Chairman of the Board shall be set by the Chairman of the Board or as designated by the Board of Directors.

Section 7. Chairman of the Board.

The Chairman of the Board shall be the Chief Executive Officer of the corporation and shall have the general and active management of the business of the corporation and general and active supervision and direction over the other officers, agents and employees and shall see that their duties are properly performed. The Chairman of the Board shall, if present, preside at each meeting of the stockholders of the corporation. He or she shall perform all duties incident to the office of Chairman of the Board and Chief Executive Officer and such other duties as may from time to time be assigned to him or her by the Board of Directors or these Bylaws. The Chairman of the Board shall have the power to vote all securities of any other entity held by the corporation, except as may be otherwise determined by the Board.

Section 8. President.

The President shall have the general and active management of the business of the corporation and general and active supervision and direction over the other officers, agents and employees and shall see that their duties are properly performed, subject, however, to the direction of the Chairman of the Board. The President shall perform all duties incident to the office of President and such other duties as may be assigned to him or her by the Board of Directors, the Chairman of the Board or these Bylaws.

Section 9. Chief Financial Officer.

The Chief Financial Officer shall control, audit and arrange the financial affairs of the corporation, consistent with the responsibilities delegated to him or her by the Chairman of the

Board or the President. The Chief Financial Officer or the Treasurer or one or more Assistant Treasurers shall receive and deposit all monies belonging to the corporation and shall pay out the same only in such manner as the Board of Directors may from time to time determine. The Chief Financial Officer shall have such other duties as may be assigned to him or her by the Board of Directors.

Section 10. Secretary.

The Secretary or one or more Assistant Secretaries shall attend all meetings of the Board and all meetings of stockholders and act as secretary thereof, and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for any committee of the Board when required. The Secretary shall be given other duties as pertain to his or her office. The Secretary shall keep in safe custody the seal of the corporation and when authorized by the Board of Directors, affix it, when required, to any instrument. An Assistant Secretary shall perform the duties of the Secretary in the event of his or her absence or disability and shall perform such other duties as may be imposed upon him or her by the Board of Directors.

Section 11. Absence or Disability of Officers.

In the absence or disability of the Chairman of the Board, the President or the Chief Financial Officer, the Board of Directors may designate, by resolution, individuals to perform their duties. The Board of Directors may also delegate this power to a committee.

## ARTICLE VI.
## STOCK CERTIFICATES AND TRANSFER THEREOF

Section 1. Stock Certificates.

The shares of the corporation shall be represented by certificates, provided that the Board of Directors may authorize by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of any resolution providing for uncertificated shares, every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of, the corporation by the Chairman of the Board or the President, and by the Chief Financial Officer, Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, certifying the number of shares, and the class and series thereof, owned by the stockholder in the corporation. Any and all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Lost, Destroyed or Mutilated Certificates; Transfers of Stock.

In the case of loss or destruction of a certificate of stock, no new certificate or uncertificated shares shall be issued in lieu thereof except upon satisfactory proof to the Secretary of such loss or destruction; and upon the giving of satisfactory security, by bond or otherwise, against loss to the corporation, if such is deemed to be required.

In addition, shares of capital stock of the corporation shall be transferable in the manner prescribed by law and in these Bylaws. Shares of capital stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by applicable law), with such evidence of the authenticity of such endorsement or execution, transfer, authorization, or other matters as the corporation may reasonably require, and the payment of all taxes thereon.

Section 3. Record Date.

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof or entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not (A) in the case of determination of stockholders entitled to notice of any meeting of stockholders or adjournment thereof, be more than sixty (60) nor less than ten (10) days before the date of such meeting, and (B) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, be more than ten (10) days from the date upon which the resolution fixing the record date is adopted by the Board of Directors. If the Board shall fix a record date for determining the stockholders entitled to notice of a meeting of stockholders or any adjournment thereof, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the corporation may determine the stockholders 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, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not be more than sixty (60) days prior to such other action.

## ARTICLE VII.
## INDEMNIFICATION

Section 1. Right to Indemnification.

Each person who was or is a party or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a Director or officer of the corporation or that, being or having been such a Director or officer of the corporation, he or she 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 or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a Director, officer, employee or agent or in any other capacity while serving as a Director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the full extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended or by other applicable law as then in effect, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that except as provided in Section 3 of this Article VII with respect to proceedings seeking to enforce rights to indemnification, the corporation shall indemnify any such indemnitee seeking indemnification in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article VII shall be a contract right and, in accordance with and subject to the provisions of Section 2 of this Article VII, shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition.

Section 2. Advance of Expenses.

The corporation will advance to any person eligible for indemnification pursuant to Section 1 of this Article VII, prior to the final disposition of the proceeding, all expenses reasonably incurred by any such person in connection with defending such proceeding, upon receipt of a request therefor; provided, however, that an advancement of expenses incurred by an indemnitee in his or her capacity as a Director or officer shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking") by or on behalf of such indemnitee to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise. Notwithstanding the foregoing, the obligation of the corporation to advance costs and expenses pursuant to this Section 2 shall be subject to the condition that, if, when and to the extent the corporation determines, at any time prior to the final disposition of the proceedings, that the indemnitee would not be permitted to be indemnified under applicable law, the corporation shall be entitled to be reimbursed, within thirty (30) days of such determination, by the indemnitee (who shall agree to reimburse the

corporation as a condition to receipt of any such advances) for all such amounts theretofore paid; provided, however, that if the indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that the indemnitee may be indemnified under applicable law, any determination made by the corporation that the indemnitee would not be permitted to be indemnified under applicable law shall not be binding and the indemnitee shall not be required to reimburse the corporation for any advance of costs or expenses until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

Section 3. Right of Indemnitee to Bring Suit.

If a claim under Section 1 or Section 2 of this Article VII is not paid in full by the corporation within sixty (60) days after a written claim has been received by the corporation, except in the case of a claim for advancement of expenses, in which case the applicable period shall be twenty (20) days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, the indemnitee shall be entitled to be paid also the expense of prosecuting such suit. The indemnitee shall be presumed to be entitled to indemnification under this Article VII upon submission of a written claim (and, in an action brought to enforce a claim for advancement of expenses, where the required undertaking is required, has been tendered to the corporation), and thereafter the corporation shall have the burden of proof to overcome the presumption that the indemnitee is not so entitled. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee is not entitled to indemnification shall be a defense to the suit or create a presumption that the indemnitee is not so entitled.

Section 4. Nonexclusivity of Rights; Amendment or Repeal.

The right to indemnification and to the advancement of expenses conferred in this Article VII shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, any agreement, a vote of stockholders or disinterested Directors or otherwise. A right to indemnification or to advancement of expenses arising under a provision of this Article VII shall not be eliminated or impaired by an amendment to such provision after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

Section 5. Insurance, Contracts and Funding.

The corporation may maintain insurance, at its expense, to protect itself and any Director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law. The corporation may without further stockholder approval,

enter into contracts with any indemnitee in furtherance of the provisions of this Article VII and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article VII.

Section 6. Persons Serving Other Entities.

Any person who is or was a Director or officer of the corporation who is or was serving as a Director, officer, employee or agent of another corporation of which a majority of the shares entitled to vote in the election of its Directors is held by the corporation shall be deemed to be so serving at the request of the corporation and entitled to indemnification and advancement of expenses under Section 1 and Section 2 of this Article VII. The corporation's obligation, if any, to indemnify any person who was or is serving at its request as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust or other enterprise.

Section 7. Indemnification of Employees and Agents of the Corporation.

The corporation may, by action of its Board of Directors, grant rights to indemnification and advancement of expenses to any employee or agent, or any group or groups of employees or agents, of the corporation with the same scope and effect as the provisions of this Article VII with respect to the indemnification and advancement of expenses of Directors and officers of the corporation.

Section 8. Severability.

If any provision or provisions of this Article VII will be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Article VII (including, without limitation, each portion of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article VII (including, without limitation, each such portion of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## ARTICLE VIII.
## CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 1. Checks, Drafts, Etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent or agents of the corporation and in such manner as shall, from time to time, be determined by resolution of the Board of Directors or by such officers of the corporation as may be

designated by the Board of Directors to make such determination. Such authority may be general or confined to specific circumstances.

Section 2. Deposits.

All funds of the corporation shall be deposited, from time to time, to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select, or as may be selected by any officer or officers or agent or agents of the corporation to whom such power may, from time to time, be delegated by the Board of Directors; and for the purpose of such deposit, any officer or agent to whom such power may be delegated by the Board of Directors, may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the corporation.

## ARTICLE IX.
## NOTICES

Whenever notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any Director, member of a committee or stockholder, such notice may be given by mail, or by other means of written communication, addressed to such Director, member of a committee or stockholder, at such person's address as it appears on the books of the corporation or as given by such person to the corporation for the purpose of notice, with postage thereon prepaid, and if by mail, such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Except as otherwise required by law, notice may also be given personally, or by telephone, electronic mail, facsimile transmission, or other electronic transmission. Telephone notice shall be deemed to be given when such person or his or her agent is personally given such notice in a telephone call to which such person or his or her agent is a party. Electronic mail notice shall be deemed to be given when directed to an electronic mail address at which such person has consented to receive notice. Facsimile transmission notice shall be deemed to be given when directed to a number at which such person has consented to receive notice. Notice given by posting on an electronic network together with a separate notice of such specific posting shall be deemed to be given upon the later to occur of (A) such posting and (B) the giving of such separate notice of such posting. Other electronic transmission notice shall be deemed to be given when directed to such person in the manner in which such person has consented to receive such notice. For a notice to stockholders, notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the Delaware General Corporation Law.

## ARTICLE X.
## FORUM SELECTION

Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, other employee or stockholder of the corporation to the corporation or the corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware

General Corporation Law or as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware, or (4) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Article X.

## ARTICLE XI.
## AMENDMENTS

These Bylaws may be altered or repealed and new Bylaws may be made by the affirmative vote of a majority of the Board of Directors, subject to the right of the stockholders to amend or repeal Bylaws, including Bylaws made or amended by the Board of Directors, or to adopt new Bylaws, by the affirmative vote of a majority of the outstanding stock of the corporation entitled to vote thereon at any meeting of stockholders, provided that notice of the proposed action be included in the notice of such meeting. Except as otherwise provided by the Delaware General Corporation Law, any Bylaws made or altered by the stockholders may be altered or repealed by either the Board of Directors or the stockholders.

* * * * *