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

DIVISION OF
CORPORATION FINANCE

January 23, 2018

J. Allen Overby
Bass, Berry & Sims PLC
aoverby@bassberry.com

Re: HCA Healthcare, Inc.
Incoming letter dated December 22, 2017

Dear Mr. Overby:

This letter is in response to your correspondence dated December 22, 2017 concerning the shareholder proposal (the "Proposal") submitted to HCA Healthcare, Inc. (the "Company") by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

January 23, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: HCA Healthcare, Inc.
Incoming letter dated December 22, 2017

The Proposal asks the board to provide proxy access with the procedures and criteria set forth in the Proposal.

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

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

BASS BERRY + SIMS PLC

150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6200

December 22, 2017

VIA ELECTRONIC MAIL

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

Re: HCA Healthcare, Inc. Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

On behalf of our client, HCA Healthcare, Inc., a Delaware corporation (the "Company" or "HCA"), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in reference to the Company's intention to exclude from its proxy statement and form of proxy for the Company's 2018 annual meeting of stockholders (collectively, the "2018 Proxy Materials") a stockholder proposal and related supporting statement (the "Proposal"), received from Mr. John Chevedden (the "Proponent").

For the reasons outlined below, we hereby respectfully request that the Staff of the Division of Corporation Finance (the "Staff") not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if, in reliance on the analysis set forth below, it excludes the Proposal from its 2018 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are submitting this letter to the Staff via email at shareholdersproposals@sec.gov, and the undersigned has included his name, email address and telephone number in this letter. We are simultaneously forwarding by email a copy of this letter to the Proponent as notice of the Company's intent to exclude the Proposal from the Company's 2018 Proxy Materials.

THE STOCKHOLDER PROPOSAL

The Company first received a stockholder proposal regarding proxy access from the Proponent on October 30, 2017 which is attached hereto as Exhibit A. On November 14, 2017, the Company received the revised and current Proposal from the Proponent, the full text of which is attached hereto as Exhibit B. The Proposal requests that the Company's board of directors (the "Board") provide proxy access for stockholder nominees. The Proposal includes the following resolution:

> "RESOLVED: Shareholders ask the board of directors to amend its bylaws or other documents, as necessary, to provide proxy access for shareholders as follows:
>
> 1. Nominating shareholders or shareholder groups must beneficially own 3% or more of the Company's outstanding common stock continuously for at least 3-years and pledge to hold such stock through the annual meeting.
>
> 2. Nominators may submit a statement not exceeding 500-words or less in support of each nominee to be included in the Company proxy.
>
> 3. The number of shareholder-nominated candidates eligible to appear in proxy materials shall be 25% of the directors then serving or two, whichever is greater.
>
> 4. No limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock.
>
> 5. No limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election.
>
> 6. The Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees are not elected.
>
> 7. Loaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting."

BASIS FOR EXCLUSION OF PROPOSAL

We hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) under the Exchange Act, which provides that a stockholder proposal may be excluded from a company's proxy statement if "the company has already substantially implemented the proposal."

On December 19, 2017, the Board adopted amendments to the Company's Amended and Restated Bylaws in the form attached hereto as Exhibit E (the "Second Amended and Restated Bylaws"), which provide for proxy access. The Second Amended and Restated Bylaws provide that a single stockholder or group of stockholders that has owned three percent (3%) or more of the Company's common stock continuously for at least three years has the right to include director nominees in the Company's proxy materials, up to a specified limit. The Second Amended and Restated Bylaws also include additional provisions, as described below.

We believe that the Second Amended and Restated Bylaws address each of the essential elements of the Proposal. In this respect, it is relevant to note that the Proposal is substantially the same proposal that the Staff considered in a significant number of prior no-action requests, and that the proxy access terms adopted by the Company are substantially similar to those adopted by other companies that the Staff has concurred substantially implement the type of proxy access stockholder proposal submitted by the Proponent. *See e.g., OGE Energy Corp.* (Feb. 24, 2017); *Comcast Corp.* (Feb. 15, 2017); *Lincoln National Corp.* (Feb. 9, 2017); *Mattel, Inc.* (Feb. 3, 2017); *CBRE Group, Inc.* (Feb. 1, 2017); *AutoNation, Inc.* (Dec. 30, 2016). As a result, we believe that this no-action request does not raise any novel issues, and we respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal by adopting a proxy access bylaw provision satisfying the Proposal's essential objective of providing stockholders a meaningful proxy access right.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented

a. Background and Overview of Rule 14a-8(i)(10)

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. The Staff has explained that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management." Exchange Act Release No. 12598 (July 7, 1976). The Commission has made clear that, in order to meet the "substantially implemented" standard, a stockholder proposal need not be "fully effected" by the company. *See* Exchange Act Release No. 40018 (May 21, 1998) (reaffirming the position taken by the Commission in Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release")). Indeed, in the 1983 Release, the Commission concluded that the "previous formalistic application [of the rule]"—i.e., an interpretation that required line-by-line compliance by companies—"defeated its purpose" because proponents had been successfully avoiding exclusion by submitting proposals that deviated from existing company policy by only a few words. As such, the Commission revised its interpretation of the rule in the 1983 Release to

allow the exclusion of proposals that had been "substantially implemented," which the Commission codified in Exchange Act Release No. 40018, at n.30 (May 21, 1998).

Applying this standard, the Staff has consistently taken the position that "a determination that the company has substantially implemented the proposal depends upon whether its particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). The Staff has afforded no-action relief under Rule 14a-8(i)(10) when a company has satisfied the "essential objective" of the proposal, even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement the proposal in every detail and/or (iii) exercised discretion in determining how to implement the proposal. *See, e.g., OGE Energy Corp.* (Feb. 24, 2017); *Lockheed Martin Corp.* (Dec. 19, 2016); *Exxon Mobil Corp.* (Mar. 17, 2015; recon. denied Mar. 25, 2015); *Exelon Corp.* (Feb. 26, 2010); *Hewlett-Packard Co.* (Dec. 11, 2007); *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); *Johnson & Johnson* (Feb. 17, 2006); *The Talbots Inc.* (Apr. 5, 2002); *Masco Corp.* (Apr. 19, 1999 and Mar. 29, 1999). In each of these cases, the Staff concurred with the companies' determination that the proposal was substantially implemented for purposes of Rule 14a-8(i)(10) when the company had taken actions that included deviations from what was directly contemplated by the proposal, including in circumstances when the company had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise implemented the essential objective of the proposal.

The Staff has recently confirmed that this analysis applies to stockholder proposals requesting proxy access amendments in like manner. The Staff has granted no-action relief with respect to the exclusion of proxy access proposals submitted to other similarly situated companies that have proposed or adopted proxy access bylaw provisions with an ownership threshold mirroring the threshold requested by the stockholder proposal (typically three percent (3%) of the outstanding common stock), despite the existence of other variations from the terms of the stockholder proposal, such as the limit on the number of stockholder nominees or the number of stockholders that can aggregate their shares to achieve the threshold amount. *See, e.g., OGE Energy Corp.* (Feb. 24, 2017); *Celgene Corp.* (Feb. 22, 2017); *Comcast Corp.* (Feb. 15, 2017); *Lincoln National Corp.* (Feb. 9, 2017); *Mattel, Inc.* (Feb. 3, 2017); *CBRE Group, Inc.* (Feb. 1, 2017); *AutoNation, Inc.* (Dec. 30, 2016); *Lockheed Martin Corp.* (Dec. 19, 2016); *Berry Plastics Group, Inc.* (Dec. 14, 2016); *Cardinal Health, Inc.* (July 20, 2016); *United Continental Holdings, Inc.* (Feb. 26, 2016); *Alaska Air Group, Inc.* (Feb. 12, 2016); *PPG Industries, Inc.* (Feb. 12, 2016); *The Western Union Co.* (Feb. 12, 2016); *UnitedHealth Group, Inc.* (Feb. 12, 2016); *General Electric Co.* (March 3, 2015).

b. <u>The Second Amended and Restated Bylaws Substantially Implement the Proposal</u>

Under the above-described analysis, the Company, through the Board's adoption of the Second Amended and Restated Bylaws, has substantially implemented the Proposal because the Second Amended and Restated Bylaws address the essential objective of the Proposal: providing for a proxy access procedure under which a single stockholder or group of stockholders owning

three percent (3%) or more of the Company's common stock continuously for at least three years may include in the Company's proxy materials stockholder-nominated director candidates. The following is a discussion of each element of the Proposal and how each element is addressed by the Second Amended and Restated Bylaws:

i. *Ownership Threshold and Holding Period*

Paragraph (1) of the Proposal states that nominating stockholders "must beneficially own 3% or more of the Company's outstanding common stock continuously for at least 3-years and pledge to hold such stock through the annual meeting." Similarly, Section 14(E) of Article II of the Second Amended and Restated Bylaws requires that a nominating stockholder, or group of nominating stockholders, own at least three percent (3%) of outstanding stock continuously for at least three years through the date of the annual meeting.

ii. *Supporting Statement*

Paragraph (2) of the Proposal requests that a nominating stockholder be permitted to "submit a statement of 500-words or less in support of each nominee to be included in the Company proxy." Section 14(A) of Article II of the Second Amended and Restated Bylaws allows the nominating stockholder(s) to submit a written statement in support of each of its nominee(s), not to exceed 500 words, to be included in the Company's proxy statement.

iii. *Number of Nominees*

Paragraph (3) of the Proposal provides that the "number of shareholder-nominated candidates eligible to appear in proxy materials shall be 25% of the directors then serving or two, whichever is greater." Similarly, Section 14(C) of Article II of the Second Amended and Restated Bylaws limits the number of nominees a stockholder may nominate to the greater of 20% of the number of directors in office or two. Although the Second Amended and Restated Bylaws do not permit nominating stockholders to nominate a number of directors equal to 25% of the Board, the Staff has consistently permitted exclusion of similar proxy access proposals that sought the ability to nominate up to 25% of the board where the company limited the percentage to 20%. *See, e.g., Marriott International, Inc.* (Feb. 27, 2017); *OGE Energy Corp.* (Feb. 24, 2017); *Lincoln National Corp.* (Feb. 9, 2017), *Mattel, Inc.* (Feb. 3, 2017); *AutoNation, Inc.* (Dec. 30, 2016); *Lockheed Martin Corp.* (Dec. 19, 2016); *General Motors Co.* (March 21, 2016).

iv. *Group Nominations*

Paragraph (4) of the Proposal provides that "[n]o limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock." We believe we have substantially implemented this element of the Proposal. Although Section 14(E) of Article II of the Second Amended and Restated Bylaws limits the number of stockholders that may aggregate to twenty, the Commission has recently addressed this issue, granting no-action

relief on the basis of substantial implementation when the company's amended bylaws include a reasonable limit on the number of stockholders that may aggregate to reach the ownership threshold, despite a proposal seeking that groups be "unlimited" in number. *See, e.g., Marriott International, Inc.* (Feb. 27, 2017) (concurring in exclusion where the proxy access proposal sought no limitation when aggregating stockholders and the company limited aggregation to twenty stockholders); *OGE Energy Corp.* (Feb. 24, 2017) (same); *Lincoln National Corp.* (Feb. 9, 2017) (same); *Mattel, Inc.* (Feb. 3, 2017) (same); *AutoNation, Inc.* (Dec. 30, 2016) (same); *Amazon.com, Inc.* (March 3, 2016) (same).

v. *Limitation on Re-Nominations*

Paragraph (5) of the Proposal states that "[n]o limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election." Section 14(I) of Article II of the Second Amended and Restated Bylaws provides that any stockholder nominee who fails to receive at least twenty-five percent (25%) of the votes cast in his or her favor is ineligible to stand for election for the next two annual stockholder meetings. A substantial majority of the public companies that have adopted proxy access to date place similar restrictions on the ability of resubmit nominees that previously received low vote percentages. Under the Second Amended and Restated Bylaws, the applicable stockholders (or group) are not limited in their ability to nominate different candidates through the proxy access provisions. This common exclusion of nominees to receive a reasonable minimum level of votes is in no way material to the essential elements of proxy access bylaws. The Commission has granted exclusion of comparable proxy access proposals with similar limitations on the re-nomination of stockholder nominees that differ from the stockholder proposal. *See, e.g., Lincoln National Corp.* (Feb. 9, 2017); *WD-40 Co.* (Sept. 27, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Amazon.com, Inc.* (Mar. 3, 2016); *The Dun & Bradstreet Corp.* (Feb. 12, 2016).

vi. *No Pledge to Hold Stock After the Meeting*

Paragraph (6) of the Proposal states that the "Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees are not elected." Similarly, the Second Amended and Restated Bylaws do not require nominating stockholders to hold their shares beyond the annual meeting.

vii. *Counting Loaned Shares*

Paragraph (7) of the Proposal provides that "[l]oaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting." Similarly, Section 14(D) of the Second Amended and Restated Bylaws permits the counting of loaned shares to satisfy the ownership threshold requirement, but with reasonable qualifications. In order to count loaned shares, the nominating stockholder must (x) have the

power to recall the loaned shares on no more than five (5) business days' notice, (y) in fact recall the shares upon notification that any of its nominees will be included in the proxy materials and (z) continue to hold the shares through the annual meeting. The Commission has determined that such reasonable qualifications, as provided for in the Second Amended and Restated Bylaws, substantially implement a stockholder proposal that sought the ability for stockholders to count loaned shares in order to gain proxy access. *See e.g., Lincoln National Corp.* (Feb. 9, 2017); *CBRE Group, Inc.* (Feb. 1, 2017); *WD-40 Co.* (Sept. 27, 2016); *Oracle Corp.* (Aug. 11, 2016); *Amazon.com, Inc.* (Mar. 3, 2016); *The Dun & Bradstreet Corp.* (Feb. 12, 2016).

As a whole, the Company believes the proxy access terms provided for in the Second Amended and Restated Bylaws substantially implement the Proposal and achieve the Proposal's essential objective of making proxy access available to stockholders who meet reasonable criteria. None of the minor variations or additional terms impact the essential terms of proxy access. Accordingly, we believe we may properly exclude the Proposal from our 2018 Proxy Materials in reliance on Rule 14a-(8)(i)(10) and longstanding precedent thereunder.

CONCLUSION

For the foregoing reasons, we respectfully request that the Staff not recommend any enforcement action from the Commission if the Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

Should you have any questions, or if the Staff is unable to concur in our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter.

Please do not hesitate to contact the undersigned, J. Allen Overby, at (615) 742-6211 or AOverby@bassberry.com.

Sincerely,

J. Allen Overby

Enclosures

cc: John M. Franck II, HCA Healthcare, Inc.
John Chevedden

EXHIBIT A

Original Proposal

JOHN CHEVEDDEN
***

Mr. John M. Franck II
Vice President – Legal and Corporate Secretary
HCA Holdings, Inc. (HCA)
One Park Plaza
Nashville, TN 37203
PH: 615-344-9551
FX: 615-344-1600

Dear Mr. Franck,

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

October 30, 2017

Date

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

[HCA – Rule 14a-8 Proposal, October 30, 2017]11-17
[This line and any line above it – *Not* for publication.]

Proposal [4] - Shareholder Proxy Access

RESOLVED: Shareholders ask the board of directors to amend its bylaws or other documents, as necessary, to provide proxy access for shareholders as follows:

1. Nominating shareholders or shareholder groups must beneficially own 3% or more of the Company's outstanding common stock continuously for at least three years and pledge to hold such stock through the annual meeting.
2. Nominators may submit a statement of 500 words or less in support of each nominee to be included in the Company proxy.
3. The number of shareholder-nominated candidates eligible to appear in proxy materials shall be one quarter of the directors then serving or two, whichever is greater.
4. No limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock.
5. No limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election.
6. The Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees are not elected.
7. Loaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting.

Proxy access for shareholders enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management's director candidates. A competitive election is good for everyone. This proposal can help ensue that our management will nominate directors with outstanding qualifications after 2018 in order to avoid giving shareholders a good reason to exercise their right to use proxy access.

This proposal topic has been adopted by hundreds of Fortune 500 companies (or near Fortune 500 companies) since 2016. Our top management was apparently waiting for a shareholder to propose shareholder proxy access. Our trailing top management also waited for shareholder proposals before it took positive action on a widely-accepted requirement that unopposed directors receive a majority vote and for HCA shareholders to have the widely-accepted right to call a special shareholder meeting.

Sadly our top management did not put enough horsepower behind their failed proposal for the widely-accepted shareholder right to call a special shareholder meeting. If the management special meeting proposal would have boosted executive pay one can bet a lot more management effort would have been devoted to it.

In regard to our trailing governance leadership Ann Lamont chaired our corporate governance committee. Robert Dennis was also on our corporate governance committee. Mr. Dennis received 20-times as many negative votes as Charles Holiday and each of 5 other HCA directors.

Proxy access, put forth by this shareholder proposal, is a low-cost method to improve company performance – especially compared to our $25 billion investment in HCA.

Please vote to enhance shareholder value:

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(l)(3) in the following circumstances:

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

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

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

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

EXHIBIT B

Revised Proposal

JOHN CHEVEDDEN
***

Mr. John M. Franck II
Vice President – Legal and Corporate Secretary
HCA Holdings, Inc. (HCA)
One Park Plaza
Nashville, TN 37203
PH: 615-344-9551
FX: 615-344-1600

REVISED 14 NOV 2017

Dear Mr. Franck,

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

October 30, 2017
Date

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

[HCA – Rule 14a-8 Proposal, October 30, 2017, Revised November 14, 2017]11-17
[This line and any line above it – *Not* for publication.]

Proposal [4] - Shareholder Proxy Access

RESOLVED: Shareholders ask the board of directors to amend its bylaws or other documents, as necessary, to provide proxy access for shareholders as follows:

1. Nominating shareholders or shareholder groups must beneficially own 3% or more of the Company's outstanding common stock continuously for at least 3-years and pledge to hold such stock through the annual meeting.
2. Nominators may submit a statement of 500-words or less in support of each nominee to be included in the Company proxy.
3. The number of shareholder-nominated candidates eligible to appear in proxy materials shall be 25% of the directors then serving or two, whichever is greater.
4. No limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock.
5. No limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election.
6. The Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees are not elected.
7. Loaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting.

Proxy access for shareholders enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management's director candidates. A competitive election is good for everyone. This proposal can help ensue that our management will nominate directors with outstanding qualifications after 2018 in order to avoid giving shareholders a good reason to exercise a right to use proxy access.

450 companies have already adopted this proposal topic since 2015. Our top management was apparently waiting for a shareholder proposal on this topic. Our trailing top management also waited for shareholder proposals before it took positive action on such widely-accepted requirements that unopposed directors receive a majority vote and for HCA shareholders to have the widely-accepted right to call a special shareholder meeting.

Sadly our top management did not put enough horsepower behind their failed proposal for the widely-accepted shareholder right to call a special shareholder meeting. If the management proposal regarding special meetings would have boosted executive pay – one can bet a lot more management effort would have been devoted to it.

In regard to HCA's lagging governance Ann Lamont chaired our corporate governance committee. Robert Dennis was also on our corporate governance committee. Mr. Dennis received up to 20-times more negative votes as 6 other HCA directors.

Proxy access, put forth by this shareholder proposal, is a low-cost method to improve company performance – especially compared to our $25 billion investment in HCA.

Please vote to enhance shareholder oversight:

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(l)(3) in the following circumstances:

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

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

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

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

EXHIBIT C

HCA Correspondence

HCA

One Park Plaza
Nashville, TN
37203

Hospital Corporation of America

November 2, 2017

***

VIA FEDERAL EXPRESS AND EMAIL

Mr. John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of HCA Healthcare, Inc. (the "Company"), which received from you on October 30, 2017, a shareholder proposal (the "Proposal") to be included in the Company's proxy statement (the "Proxy Statement") to be sent to the Company's shareholders in connection with the Company's next annual meeting of shareholders. We are currently reviewing the Proposal to determine if it is eligible for inclusion in the Proxy Statement; however, proof of your ownership of the Company's stock was not included with the Proposal. Therefore, in accordance with Rule 14a-8(f) of the Securities Exchange Act of 1934, the purpose of this letter is to notify you of the Proposal's deficiency with respect to proof of your ownership of the Company's stock as required by Rule 14a-8(b).

In order to be eligible to submit a shareholder proposal pursuant to Rule 14a-8, Rule 14a-8(b) requires a proponent to have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the annual meeting for at least one year by the date the proponent submits the proposal. The proponent must then continue to hold those securities through the date of the meeting at which the shareholder proposal is presented. Unless the proponent appears in the company's records as the registered holder of the securities, the proponent must offer poof of eligibility at the time the proposal is submitted.

In the Proposal, you stated your intention to hold the requisite amount of the Company's securities supporting your eligibility until after the annual meeting of shareholders at which the Proposal will be presented. However, the Proposal is currently deficient because you have not proven your ownership of such securities as required by Rule 14a-8(b). Because your name does not appear in the Company's stock register as the registered holder of the requisite amount of the Company's securities under Rule 14a-8(b), you must submit sufficient proof of ownership by either:

(i) submitting to the Company a written statement from the "record" holder of your stock in the Company (usually a broker or bank) verifying that, at the time you submitted the Proposal, you continuously held the securities for at least one year (please note that an account statement from your broker or bank will not satisfy this requirement); or

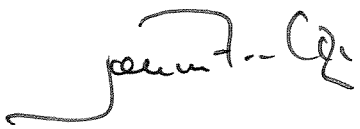
(ii) if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4, and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period

began with the U.S. Securities and Exchange Commission (the "SEC"), submitting to the Company: (a) a copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level, and (b) your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement.

Enclosed for your reference please find (i) a copy of Rule 14a-8 and (ii) recent guidance from the staff of the SEC regarding, among other things, brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8, and common errors shareholders can avoid when submitting proof of ownership to companies.

Rule 14a-8(f) provides that your response, including the required proof of eligibility, must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date you receive this notice of defect. If you do not adequately cure the defect within the stipulated timeframe, Rule 14a-8(f) allows the Company to exclude the Proposal from the Proxy Statement. Please address any response to me at HCA Healthcare, Inc., One Park Plaza, Nashville, TN 37203, Attention: Corporate Secretary. Alternatively, you may e-mail your response to me at John.Franck@HCAHealthcare.com.

Sincerely,



John M. Franck II
Vice President – Legal and
Corporate Secretary

Enclosures:
Rule 14a-8 of the Securities Exchange Act of 1934
Division of Corporation Finance Staff Bulletin No. 14F
Division of Corporation Finance Staff Bulletin No. 14G

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information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE 1 TO §240.14A–7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

NOTE 2 TO §240.14A–7 When providing the information required by §240.14a–7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with §240.14a–3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996; 65 FR 65750, Nov. 2, 2000; 72 FR 4167, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007]

§240.14a–8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1:* What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2:* Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible? (1) In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d–101), Schedule 13G (§240.13d–102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this

chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10–Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d–1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a–8 and provide you with a copy under Question 10 below, § 240.14a–8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified

under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions:* If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections:* If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal:* If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented:* If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant

to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication:* If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(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 materials within the preceding 5 calendar years, a company may exclude it from its proxy materials 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;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10:* What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may

express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our antifraud rule, §240.14a–9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a–6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

§ 240.14a–9 False or misleading statements.

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

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the Federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§240.14n–101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for the same meeting or subject matter which has become false or misleading.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

a. Predictions as to specific future market values.

b. Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

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

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

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

A. The purpose of this bulletin

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

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

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

B. The types of brokers and banks that constitute "record" holders

under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

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

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

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

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

2. The role of the Depository Trust Company

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

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

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer

accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

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

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

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

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

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx.

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

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder

should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

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

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

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

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

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

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

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

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

verification of ownership as of the date they plan to submit the proposal using the following format:

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

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

D. The submission of revised proposals

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

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

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

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

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

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

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

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it

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

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

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

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

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

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

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

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response.

Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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

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

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

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

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

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

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

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

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's

identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

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

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

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

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

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

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

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

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

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14G (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 16, 2012

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

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

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

A. The purpose of this bulletin

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

- the parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- the manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1); and
- the use of website references in proposals and supporting statements.

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

B. Parties that can provide proof of ownership under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Sufficiency of proof of ownership letters provided by

affiliates of DTC participants for purposes of Rule 14a-8(b)(2)(i)

To be eligible to submit a proposal under Rule 14a-8, a shareholder must, among other things, provide documentation evidencing that the shareholder has continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. If the shareholder is a beneficial owner of the securities, which means that the securities are held in book-entry form through a securities intermediary, Rule 14a-8(b)(2)(i) provides that this documentation can be in the form of a "written statement from the 'record' holder of your securities (usually a broker or bank)...."

In SLB No. 14F, the Division described its view that only securities intermediaries that are participants in the Depository Trust Company ("DTC") should be viewed as "record" holders of securities that are deposited at DTC for purposes of Rule 14a-8(b)(2)(i). Therefore, a beneficial owner must obtain a proof of ownership letter from the DTC participant through which its securities are held at DTC in order to satisfy the proof of ownership requirements in Rule 14a-8.

During the most recent proxy season, some companies questioned the sufficiency of proof of ownership letters from entities that were not themselves DTC participants, but were affiliates of DTC participants.[1] By virtue of the affiliate relationship, we believe that a securities intermediary holding shares through its affiliated DTC participant should be in a position to verify its customers' ownership of securities. Accordingly, we are of the view that, for purposes of Rule 14a-8(b)(2)(i), a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant.

2. Adequacy of proof of ownership letters from securities intermediaries that are not brokers or banks

We understand that there are circumstances in which securities intermediaries that are not brokers or banks maintain securities accounts in the ordinary course of their business. A shareholder who holds securities through a securities intermediary that is not a broker or bank can satisfy Rule 14a-8's documentation requirement by submitting a proof of ownership letter from that securities intermediary.[2] If the securities intermediary is not a DTC participant or an affiliate of a DTC participant, then the shareholder will also need to obtain a proof of ownership letter from the DTC participant or an affiliate of a DTC participant that can verify the holdings of the securities intermediary.

C. Manner in which companies should notify proponents of a failure to provide proof of ownership for the one-year period required under Rule 14a-8(b)(1)

As discussed in Section C of SLB No. 14F, a common error in proof of ownership letters is that they do not verify a proponent's beneficial ownership for the entire one-year period preceding and including the date the proposal was submitted, as required by Rule 14a-8(b)(1). In some cases, the letter speaks as of a date *before* the date the proposal was submitted, thereby leaving a gap between the date of verification and the date the proposal was submitted. In other cases, the letter speaks as of a

date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the proponent's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Under Rule 14a-8(f), if a proponent fails to follow one of the eligibility or procedural requirements of the rule, a company may exclude the proposal only if it notifies the proponent of the defect and the proponent fails to correct it. In SLB No. 14 and SLB No. 14B, we explained that companies should provide adequate detail about what a proponent must do to remedy all eligibility or procedural defects.

We are concerned that companies' notices of defect are not adequately describing the defects or explaining what a proponent must do to remedy defects in proof of ownership letters. For example, some companies' notices of defect make no mention of the gap in the period of ownership covered by the proponent's proof of ownership letter or other specific deficiencies that the company has identified. We do not believe that such notices of defect serve the purpose of Rule 14a-8(f).

Accordingly, going forward, we will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14a-8(f) on the basis that a proponent's proof of ownership does not cover the one-year period preceding and including the date the proposal is submitted unless the company provides a notice of defect that identifies the specific date on which the proposal was submitted and explains that the proponent must obtain a new proof of ownership letter verifying continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect. We view the proposal's date of submission as the date the proposal is postmarked or transmitted electronically. Identifying in the notice of defect the specific date on which the proposal was submitted will help a proponent better understand how to remedy the defects described above and will be particularly helpful in those instances in which it may be difficult for a proponent to determine the date of submission, such as when the proposal is not postmarked on the same day it is placed in the mail. In addition, companies should include copies of the postmark or evidence of electronic transmission with their no-action requests.

D. Use of website addresses in proposals and supporting statements

Recently, a number of proponents have included in their proposals or in their supporting statements the addresses to websites that provide more information about their proposals. In some cases, companies have sought to exclude either the website address or the entire proposal due to the reference to the website address.

In SLB No. 14, we explained that a reference to a website address in a proposal does not raise the concerns addressed by the 500-word limitation in Rule 14a-8(d). We continue to be of this view and, accordingly, we will continue to count a website address as one word for purposes of Rule 14a-8(d). To the extent that the company seeks the exclusion of a website reference in a proposal, but not the proposal itself, we will continue to follow the guidance stated in SLB No. 14, which provides that references to website addresses in proposals or supporting statements could be subject to exclusion under Rule 14a-8(i)(3) if the information contained on the website is materially false or misleading, irrelevant to the subject matter of

the proposal or otherwise in contravention of the proxy rules, including Rule 14a-9.[3]

In light of the growing interest in including references to website addresses in proposals and supporting statements, we are providing additional guidance on the appropriate use of website addresses in proposals and supporting statements.[4]

1. References to website addresses in a proposal or supporting statement and Rule 14a-8(i)(3)

References to websites in a proposal or supporting statement may raise concerns under Rule 14a-8(i)(3). In SLB No. 14B, we stated that the exclusion of a proposal under Rule 14a-8(i)(3) as vague and indefinite may be appropriate if neither the shareholders 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. In 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.

If a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite. By contrast, if shareholders and the company can understand with reasonable certainty exactly what actions or measures the proposal requires without reviewing the information provided on the website, then we believe that the proposal would not be subject to exclusion under Rule 14a-8(i)(3) on the basis of the reference to the website address. In this case, the information on the website only supplements the information contained in the proposal and in the supporting statement.

2. Providing the company with the materials that will be published on the referenced website

We recognize that if a proposal references a website that is not operational at the time the proposal is submitted, it will be impossible for a company or the staff to evaluate whether the website reference may be excluded. In our view, a reference to a non-operational website in a proposal or supporting statement could be excluded under Rule 14a-8(i)(3) as irrelevant to the subject matter of a proposal. We understand, however, that a proponent may wish to include a reference to a website containing information related to the proposal but wait to activate the website until it becomes clear that the proposal will be included in the company's proxy materials. Therefore, we will not concur that a reference to a website may be excluded as irrelevant under Rule 14a-8(i)(3) on the basis that it is not yet operational if the proponent, at the time the proposal is submitted, provides the company with the materials that are intended for publication on the website and a representation that the website will become operational at, or prior to, the time the company files its definitive proxy

materials.

3. Potential issues that may arise if the content of a referenced website changes after the proposal is submitted

To the extent the information on a website changes after submission of a proposal and the company believes the revised information renders the website reference excludable under Rule 14a-8, a company seeking our concurrence that the website reference may be excluded must submit a letter presenting its reasons for doing so. While Rule 14a-8(j) requires a company to submit its reasons for exclusion with the Commission no later than 80 calendar days before it files its definitive proxy materials, we may concur that the changes to the referenced website constitute "good cause" for the company to file its reasons for excluding the website reference after the 80-day deadline and grant the company's request that the 80-day requirement be waived.

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[1] An entity is an "affiliate" of a DTC participant if such entity directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the DTC participant.

[2] Rule 14a-8(b)(2)(i) itself acknowledges that the record holder is "usually," but not always, a broker or bank.

[3] Rule 14a-9 prohibits statements in proxy materials which, at the time and in the light of the circumstances under which they are made, are false or misleading with respect to any material fact, or which omit to state any material fact necessary in order to make the statements not false or misleading.

[4] A website that provides more information about a shareholder proposal may constitute a proxy solicitation under the proxy rules. Accordingly, we remind shareholders who elect to include website addresses in their proposals to comply with all applicable rules regarding proxy solicitations.

http://www.sec.gov/interps/legal/cfslb14g.htm

EXHIBIT D

Shareholder Correspondence

Personal Investing

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

November 10, 2017

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
Edwards Lifesciences Corp.	28176E108	EW	100
Hca Healthcare Inc Com	40412C101	HCA	50
United Rentals Inc	911363109	URI	30
Manitowoc Inc	563571108	MTW	200

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 or general inquiries regarding your account, please contact your Private Client Group Team at 800-544-5704 for assistance.

Sincerely,

Eric Jeffries
Personal Investing Operations

Our File: W853889-10NOV17

EXHIBIT E

Second Amended and Restated Bylaws

23848602.4

SECOND
AMENDED AND RESTATED BYLAWS
OF
HCA HEALTHCARE, INC.
A Delaware Corporation

ARTICLE I
OFFICES

SECTION 1. REGISTERED OFFICE. The registered office of HCA Healthcare, Inc. (the "Corporation") in the State of Delaware shall be located at Corporation Trust Center, 1209 Orange Street, in the city of Wilmington, County of New Castle, 19801. The name of the Corporation's registered agent at such address shall be The Corporation Trust Company. The registered office and/or registered agent of the Corporation may be changed from time to time by action of the Board of Directors of the Corporation (the "Board of Directors").

SECTION 2. OTHER OFFICES. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

SECTION 1. PLACE OF MEETINGS. The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting or for any special meeting.

SECTION 2. ANNUAL MEETING; ELECTION OF DIRECTORS. The annual meeting of stockholders shall be held at such date, time and place, if any, as shall be designated by the Board of Directors and stated in a notice of meeting or in a duly executed waiver thereof. At such annual meeting, the stockholders shall elect the Board of Directors and transact such other business as may properly be brought before the meeting. In uncontested director elections each director is elected by the vote of the majority of the votes cast; provided, however, that if the number of nominees proposed to be elected at that annual meeting of stockholders exceeds the number of directors proposed to be elected at that annual meeting of stockholders, then the persons receiving the greatest number of votes, up to the number of directors proposed to be elected at that annual meeting of stockholders, shall be elected. An uncontested director election means an election in which the number of nominees proposed to be elected at that annual meeting of stockholders is equal to the number of directors proposed to be elected at that annual meeting of stockholders. A majority of the votes cast means that the number of shares voted "for" a director's election exceeds the number of shares voted "against" that director. Shares voted shall not include a share otherwise present at the meeting but which abstains from voting on a director, or gives no authority or direction. An incumbent nominee not receiving a majority of the votes cast shall tender his or her resignation to the secretary of the Corporation for consideration by the Board of Directors, which resignation shall be contingent upon the acceptance thereof by the Board of Directors. The Nominating and Corporate Governance Committee of the Board of Directors shall recommend to the Board of Directors the action to be taken with respect to the resignation. The Board of Directors will publicly disclose its decision with respect to the resignation and the rationale behind its decision within ninety (90) days of the certification of the election results. The Nominating and Corporate Governance Committee in making its recommendation to the Board of Directors and the Board of Directors in making its decision with respect to the resignation may each consider any factors or other information that they consider appropriate and relevant. The director who tenders his or her resignation will not participate in the

recommendation of the Nominating and Corporate Governance Committee of the Board of Directors or the decision of the Board of Directors with respect to his or her resignation. An incumbent nominee not receiving a majority of the votes cast in an uncontested election shall continue to serve until (i) the director's successor is elected and qualifies or (ii) the Board of Directors accepts the director's resignation. If a director's resignation is accepted by the Board of Directors pursuant to this Section 2, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors may fill the resulting vacancy pursuant to the provisions of Section 11 of Article III of these Bylaws or may decrease the size of the Board of Directors pursuant to the Corporation's certificate of incorporation as then in effect (the "Certificate of Incorporation").

SECTION 3. SPECIAL MEETINGS. Special meetings of the stockholders may only be called in the manner provided in the Certificate of Incorporation.

SECTION 4. NOTICE OF MEETINGS. Whenever stockholders are required or permitted to take action at a meeting, notice of each annual and special meeting of stockholders stating the date, time and place, if any, 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 stockholders entitled to notice of the meeting), and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder of record entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice. Subject to the requirements of applicable law, notice may be provided by mail, private carrier, facsimile transmission or other form of wire, wireless or other means of electronic transmission. Subject to the requirements of applicable law, notice provided to a stockholder's e-mail address as indicated on the records of the Corporation shall be deemed proper notice for any purpose set forth in these Bylaws. Notice by mail shall be deemed given at the time when the same shall be deposited in the United States mail, postage prepaid. Notice of any meeting shall not be required to be given to any person who attends such meeting, except when such person attends the meeting in person or by proxy for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, or who, either before or after the meeting, shall submit a signed written waiver of notice, in person or by proxy. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any waiver of notice.

SECTION 5. LIST OF STOCKHOLDERS. The officer having charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principle place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

SECTION 6. QUORUM; ADJOURNMENTS. The holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of

stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented by proxy at any meeting of stockholders, the chairman of the meeting or the stockholders entitled to vote thereon, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented by proxy. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty (30) days a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after adjournment a new record date for the determination of stockholders entitled to vote is set, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give a notice of the adjourned meeting to each stockholder of record as of the record date fixed for notice of the adjourned meeting.

SECTION 7. ORGANIZATION; CONDUCT OF MEETING. At each meeting of stockholders, the chairman of the board, if one shall have been elected, or, in his absence or if one shall not have been elected, the chief executive officer shall act as chairman of the meeting. The secretary or, in his absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting shall act as secretary of the meeting and keep the minutes thereof. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or 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, the following: (i) rules and procedures for maintaining order at the meeting and the safety of those present; (ii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iii) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (iv) limitations on the time allotted to questions or comments by participants. The chairman of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a nomination or matter or business was not properly brought before the meeting and if such chairman should determine, such chairman shall so declare to the meeting and any such nomination or 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 shall not be required to be held in accordance with the rules of parliamentary procedure.

SECTION 8. ORDER OF BUSINESS. The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

SECTION 9. VOTING. Except as otherwise provided by the Certificate of Incorporation, the General Corporation Law of the State of Delaware or the certificate of designation relating to any outstanding class or series of preferred stock, each stockholder of the Corporation shall be entitled at each meeting of stockholders to one vote for each share of capital stock of the Corporation standing in his name on the record of stockholders of the Corporation:

A. on the date fixed pursuant to the provisions of Section 13 of this Article II as the record date for the determination of the stockholders who shall be entitled to vote at such meeting; or

B. if no such record date shall have been so fixed, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be the close of business on the day next preceding the day on which notice thereof shall be given, or, if notice is waived, at the close of business on the date next preceding the day on which the meeting is held.

Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy which is in writing or transmitted as permitted by law, including, without limitation, electronically, via telegram, internet, interactive voice response system, or other means of electronic transmission executed or authorized by such stockholder or his attorney-in-fact, but no proxy shall be voted after three (3) years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for so delivering such proxies. Any proxy transmitted electronically shall set forth information from which it can be determined by the secretary of the meeting that such electronic transmission was authorized by the stockholder. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereon, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of the General Corporation Law of the State of Delaware, the rules or regulations of any stock exchange applicable to the Corporation or pursuant to any law or regulation applicable to the Corporation or its securities or of the Certificate of Incorporation or of these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy.

SECTION 10. INSPECTORS. The Board of Directors may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to faithfully execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

SECTION 11. PROPOSALS AND NOMINATIONS FOR MEETINGS OF STOCKHOLDERS.

A. At an annual meeting of stockholders, only such nominations of persons for election to the Board of Directors and other business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations and other business must be:

i. brought before the meeting by the Corporation and specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or an authorized committee thereof,

ii. brought before the meeting by or at the direction of the Board of Directors or an authorized committee thereof, or

iii. otherwise properly brought before the meeting by a stockholder who:

(a) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nominations of persons for election to the Board of Directors or other business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 11 and at the time of the meeting,

(b) is entitled to vote at the meeting, and

(c) has complied with this Section 11 and, if applicable, Section 14 of this Article II as to such business.

Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), or pursuant to Section 14 of this Article II, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of stockholders or to make any nomination of a person or persons for election to the Board of Directors at an annual meeting of stockholders. The only matters that may be brought before a special meeting of stockholders are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 4 of this Article II.

B. For business to be properly brought before an annual meeting by a stockholder, or for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or a special meeting of stockholders properly called for the election of directors pursuant to Section 3 of this Article II, the stockholder must provide timely written notice in proper form to the Corporation (the "Stockholder Notice") and provide any updates or supplements to such Stockholder Notice at the times and in the forms required by this Section 11 (or, as applicable, Section 14 of this Article II). This Section 11 shall constitute an "advance notice provision" for purposes of Rule 14a-4(c)(1) under the Exchange Act.

C. To be timely, the Stockholder Notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation, addressed to the secretary of the Corporation:

i. in the case of an annual meeting, no earlier than one hundred twenty (120) days and no later than ninety (90) days prior to the first anniversary of the date of the preceding year's annual meeting; provided, however, that if (A) the annual meeting is advanced by more than thirty (30) days, or delayed by more than sixty (60) days, from the first anniversary of the preceding year's annual meeting, or (B) no annual meeting was held during the preceding year, to be timely the Stockholder Notice must be received no earlier than one hundred twenty (120) days before such annual meeting and no later than the later of ninety (90) days

before such annual meeting or the tenth day after the day on which Public Disclosure of the date of such meeting is first made, and

ii. in the case of a nomination of a person or persons for election to the Board of Directors at a special meeting of stockholders called for the purpose of electing directors, no earlier than one hundred twenty (120) days before such special meeting and no later than the later of ninety (90) days before such special meeting or the tenth day after the day on which Public Disclosure of the date of such meeting is first made.

In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of a meeting of stockholders commence a new time period (or extend any time period) for the giving of the Stockholder Notice.

D. To be in proper form, the Stockholder Notice must:

i. set forth the name and address of the stockholder giving the Stockholder Notice (and any beneficial owner, if different, on whose behalf such Stockholder Notice is submitted) (the stockholder giving the Stockholder Notice, or, if the Stockholder Notice is submitted on behalf of a beneficial owner, such beneficial owner, is referred to herein as the "Proponent") as they appear on the Corporation's books and the name and address of any Stockholder Associated Person(s) for which disclosure is required by clause (ii) below,

ii. set forth the following information:

(a) the class and number of shares of capital stock of the Corporation that are owned beneficially (within the meaning of Rule 13d-3 under the Exchange Act) and of record by the Proponent and any Stockholder Associated Person,

(b) the date such shares were acquired,

(c) a description in reasonable detail of any option, warrant, convertible security, stock appreciation right or similar right directly or indirectly owned by the Proponent or any Stockholder Associated Person with an exercise or conversion privilege or a settlement payment or mechanism at a price related to shares of any class or series of stock of the Corporation, or with a value derived in whole or in part from the price, value or volatility of shares of any class or series of stock of the Corporation, whether or not such instrument or right shall convey any voting rights in such shares, be subject to settlement in the underlying class or series of stock of the Corporation or be subject to other transactions that hedge or mitigate the economic effect of such transactions, or any other direct or indirect opportunity to profit from any increase or decrease in the value of shares of any class or series of stock of the Corporation ("Derivative Interests"),

(d) a description in reasonable detail of any proxy, contract, arrangement, understanding or other relationship pursuant to which the Proponent or any Stockholder Associated Person has a right to vote any shares of any

class or series of stock of the Corporation (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A),

(e) any agreement, arrangement, understanding or relationship, including any repurchase or so-called "stock borrowing" agreement or arrangement, engaged in directly or indirectly by the Proponent or any Stockholder Associated Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proponent or Stockholder Associated Person with respect to the shares of any class or series of stock of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of stock of the Corporation ("Short Interests"),

(f) any rights to dividends on the shares of any class or series of stock of the Corporation owned beneficially by the Proponent or any Stockholder Associated Person that are separated or separable from the underlying shares of stock of the Corporation,

(g) any performance-related fees (other than an asset-based fee) that the Proponent or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of any class or series of the stock of the Corporation or any Derivative Interest or Short Interest,

(h) any arrangements, rights or other interests described in Section 11(D)(ii)(c)-(g) above held by members of the Proponent's or any Stockholder Associated Person's immediate family sharing the same household,

(i) a representation that the Proponent intends to appear in person or by proxy at the meeting to nominate the person(s) named or propose the business specified in the Stockholder Notice and whether or not the Proponent intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding shares of capital stock required to approve the nomination(s) or the business proposed and/or otherwise to solicit proxies or votes from stockholders in support of the nomination(s) or other business proposed,

(j) a certification regarding whether or not the Proponent and Stockholder Associated Person(s) have complied with all applicable federal, state and other legal requirements in connection with the Proponent's and/or Stockholder Associated Persons' acquisition of shares of capital stock or other securities of the Corporation and/or the Proponent's and/or Stockholder Associated Persons' acts or omissions as a stockholder of the Corporation,

(k) any other information relating to the Proponent that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations thereunder, and

(l) any other information as reasonably requested by the Corporation (the disclosures to be made pursuant to the foregoing causes (a) through (k) are referred to as "Disclosable Interests"; provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proponent solely as a result of being the stockholder directed to prepare and submit the Stockholder Notice on behalf of a beneficial owner).

Such information shall be provided as of the date of the Stockholder Notice and shall be supplemented by the Proponent not later than ten (10) days after the record date for the determination of stockholders entitled to notice of the meeting to disclose information as of the record date.

iii. if the Stockholder Notice relates to any business that the Proponent proposes to bring before the meeting other than a nomination of a person or persons for election to the Board of Directors, it must set forth:

(a) a brief description of the business that the Proponent proposes to bring before the meeting, the text of the proposal (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend the Certificate of Incorporation or Bylaws, the language of the proposed amendment) and the reasons for conducting such business at the meeting,

(b) any material interest in such business of the Proponent or any Stockholder Associated Person, and

(c) a reasonably detailed description of all agreements, arrangements and understandings between the Proponent or any Stockholder Associated Person and any other person (including their names) in connection with the proposed business.

iv. set forth, as to each person, if any, whom the Proponent proposes to nominate for election or reelection to the Board of Directors:

(a) all information relating to the nominee (including, without limitation, the nominee's name, age, business and residence address and principal occupation or employment and the class or series and number of shares of capital stock of the Corporation that are owned beneficially or of record by the nominee) that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for an election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations

thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected),

(b) a description of any agreements, arrangements and understandings between or among the Proponent or any Stockholder Associated Person, on the one hand, and any other persons (including any Stockholder Associated Person), on the other hand, in connection with the nomination of such person for election as a director, and

(c) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Proponent or any Stockholder Associated Person, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the Proponent making the nomination or on whose behalf the nomination is made, if any, or any Stockholder Associated Person, were the "registrant" for purposes of Item 404 and the nominee were a director or executive officer of such registrant.

v. include a completed and signed questionnaire with respect to each nominee for election or reelection to the Board of Directors, in the form to be provided by the secretary of the Corporation upon request, setting forth the information described in clause (E) below. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of the nominee.

E. For a nominee of a stockholder to be eligible to be a nominee for election or reelection as a director of the Corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of a Stockholder Notice under this Section 11 or, in the case of a Stockholder Nominee (as defined below), the time periods prescribed for delivery of a Proxy Access Notice under Section 14 of this Article II) to the secretary at the principal executive offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the secretary upon written request) that such person:

i. is not and will not become a party to:

(a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation, or

(b) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law,

ii. 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, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed therein, and

iii. in the person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

F. Only such persons who are nominated in accordance with the procedures set forth in this Section 11 and, if applicable, Section 14 of this Article II shall be eligible to serve as directors. Only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 11. The chairman of the meeting shall determine whether any nominee or business proposed to be transacted by the stockholders has been properly brought before the meeting and, if any nominee or proposed business has not been properly brought before the meeting, the chairman shall declare that such nominee shall not be considered for election or such proposed business shall not be presented for stockholder action at the meeting. Notwithstanding the foregoing provisions of this Section 11, unless otherwise required by law, if the stockholder does not provide the supplemental information required regarding both the stockholder and any Stockholder Associated Persons under Section 11(D)(ii) or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting to present the nominee or proper business described in the Stockholder Notice, such nominee shall not be presented for election or such business shall not be transacted, notwithstanding that proxies in respect of such election or such business may have been received by the Corporation. For purposes of this Section 11, 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 a proxy at the meeting and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

G. As referred to herein, "Public Disclosure" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or the filing of information with the Securities and Exchange Commission via the EDGAR filing system.

H. As referred to herein, "Stockholder Associated Person" of any stockholder means (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of any class or series of stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

I. The foregoing notice requirements of this Section 11 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting 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.

J. Notwithstanding anything to the contrary contained in this Section 11, for as long as the Stockholders' Agreement dated as of March 9, 2011 among the Corporation, Hercules Holding II and affiliates of various equity sponsors (as may be amended, supplemented or modified from time to time, the "Stockholders' Agreement") remains in effect, no Investor Group (as defined in the Stockholders' Agreement) that has the right to nominate a person to be elected to the Board of Directors pursuant to the Stockholders' Agreement shall be subject to the procedures of this Section 11 or Section 14 of this Article II to nominate any such person to be elected to the Board of Directors.

SECTION 12. ACTION BY WRITTEN CONSENT. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken only upon the vote of the stockholders at an annual or special meeting duly called and may not be taken by written consent of the stockholders.

SECTION 13. FIXING A RECORD DATE. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors 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. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for 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 a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 14. PROXY ACCESS FOR DIRECTOR NOMINATIONS.

A. With respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 14 and Section 11 of this Article II (as applicable), the Corporation shall include in its proxy statement (including its form of proxy) for such annual meeting, in addition to any persons nominated for election by the Board of Directors, the name, together with the "Proxy Access Required Information," of any person or persons, as applicable, nominated for election to the Board of Directors (the "Stockholder Nominee(s)"), each of whom satisfies the requirements of this Section 14 and Section 11 of this Article II (as applicable) and the director qualification requirements set forth in the Corporation's Corporate Governance Guidelines and any other document(s) setting forth qualifications for directors, by an individual eligible stockholder or group of up to twenty (20) eligible stockholders (such eligible stockholder or eligible members of a group, the "Proxy Access Eligible Stockholder") who expressly elects in writing at the time of providing the notice required by this Section 14 (the "Proxy

Access Notice") to have its nominee or nominees, as applicable, included in the Corporation's proxy materials pursuant to this Section 14; provided, however, that a stockholder that has a contractual right to designate one or more nominees for director shall not be, and any of such stockholder's respective affiliates or associates and/or any others acting in concert with any of the foregoing shall not be, a Proxy Access Eligible Stockholder and shall not be eligible to participate in a group of stockholders constituting a Proxy Access Eligible Stockholder.

B. To be timely for purposes of this Section 14, the Proxy Access Notice must be made by notice in writing delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation no earlier than one hundred fifty (150) days and no later than one hundred twenty (120) days prior to the first anniversary of the date that the Corporation mailed its proxy statement for the preceding year's annual meeting of stockholders; provided, however, that in the event that no annual meeting of stockholders was held in the previous year or the annual meeting of stockholders is called for a date that is not within thirty (30) days before or after such anniversary date, such Proxy Access Notice shall be made by notice in writing delivered to, or mailed and received by, the secretary of the Corporation no later than ninety (90) days prior to such annual meeting of stockholders or, if later, ten (10) days following the day on which notice of the date of the meeting was mailed or Public Disclosure of the date of such annual meeting of stockholders was first made, whichever occurs first. In no event will an adjournment or postponement of an annual meeting of stockholders or the announcement thereof commence a new time period for the giving of a Proxy Access Notice as provided above.

C. The maximum number of Stockholder Nominees nominated by all Proxy Access Eligible Stockholders that will be required to be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (i) two (2) or (ii) the Specified Percentage of the number of directors in office as of the last day on which a Proxy Access Notice may be timely delivered pursuant to and in accordance with this Section 14 (the "Final Proxy Access Nomination Date"), rounded down to the closest whole number below the Specified Percentage if such amount is not a whole number; provided, however, that the maximum number of Stockholder Nominees shall be reduced by (1) the number of director candidates for which the Corporation shall have received one or more valid Stockholder Notices pursuant to Section 11 of this Article II, (2) the number of director candidates that the Board of Directors nominates pursuant to an agreement, arrangement or other understanding with one or more stockholders in lieu of such director candidates being formally nominated pursuant to this Section 14, (3) the number of directors in office that will be included in the Corporation's proxy materials with respect to such annual meeting of stockholders for whom access to the Corporation's proxy materials was previously provided pursuant to this Section 14, other than any such director referred to in clause (2) or this clause (3) who, at the time of such annual meeting of stockholders, will have served as a director continuously as a nominee of the Board of Directors for at least three annual terms and (4) the number of Stockholder Nominees whose names were submitted for inclusion in the Corporation's proxy materials pursuant to this Section 14 but who were subsequently withdrawn or who the Board of Directors decides to nominate as Board of Director nominees. 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 included in the Corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. Any Proxy Access Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 14 shall rank such Stockholder Nominees based on the order that the Proxy Access Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by Proxy Access Eligible Stockholders pursuant to this Section 14 exceeds the maximum number of

nominees provided for in this Section 14. In the event that the number of Stockholder Nominees submitted by Proxy Access Eligible Stockholders pursuant to this Section 14 exceeds the maximum number of nominees provided for in this Section 14, the highest ranking Stockholder Nominee who meets the requirements of this Section 14 from each Proxy Access 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 capital stock of the Corporation each Proxy Access Eligible Stockholder disclosed as owned in its respective Proxy Access Notice submitted to the Corporation. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 14 from each Proxy Access 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. Notwithstanding anything to the contrary contained in this Section 14, if the Corporation receives notice pursuant to Section 11 of this Article II that a stockholder intends to nominate for election at such meeting a number of nominees greater than or equal to a majority of the total number of directors to be elected at such meeting, no Stockholder Nominees will be included in the Corporation's proxy materials with respect to such meeting pursuant to this Section 14.

D. For purposes of this Section 14:

i. the term "Affiliates" shall have the meaning ascribed to it in Rule 12b-2 under the Exchange Act,

ii. the "Minimum Holding Period" is three (3) years,

iii. the "Proxy Access Required Information" that the Corporation will include in its proxy statement is the information provided to the secretary of the Corporation concerning the Stockholder Nominee(s) and the Proxy Access Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder, and, if the Proxy Access Eligible Stockholder so elects, a written statement, not to exceed 500 words, in support of the Stockholder Nominee(s)' candidacy (the "Statement"). Notwithstanding anything to the contrary contained in this Section 14, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule, regulation or listing standard,

iv. the "Required Ownership Percentage" is 3% or more,

v. the "Specified Percentage" is 20%, and

vi. a Proxy Access Eligible Stockholder shall be deemed to "own" only those outstanding shares of capital stock of the Corporation as to which the stockholder possesses both (a) the full voting and investment rights pertaining to the shares and (b) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided, that the number of shares calculated in accordance with clauses (a) and (b) shall not include any shares (1) sold by such stockholder or any of its Affiliates in any transaction that has not been settled or closed, (2) 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 (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its Affiliates, whether any such instrument or agreement is

to be settled with shares of capital stock of the Corporation or with cash based on the notional amount or value of shares of outstanding capital stock of the Corporation subject thereto, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (A) 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 (B) hedging, offsetting or altering to any degree any gain or loss realized or realizable arising from maintaining the full economic ownership of such shares by such stockholder or Affiliate. For purposes of this Section 14, a stockholder shall "own" shares held in the name of its bank, broker or other nominee or 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 through the annual meeting date. A stockholder's ownership of shares shall be deemed to continue during any period in which 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. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has loaned such shares, provided that the person has the power to recall such loaned shares on no more than five (5) business days' notice and (x) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation's proxy materials and (y) will continue to hold such recalled shares through the annual meeting date. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of capital stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof, which determination shall be conclusive and binding on the Corporation and its stockholders.

E. In order to make a nomination pursuant to this Section 14, a Proxy Access Eligible Stockholder must have owned the Required Ownership Percentage of the outstanding shares of capital stock of the Corporation entitled to vote in the election of directors (the "Required Shares") continuously for the Minimum Holding Period as of both (1) the date the Proxy Access Notice is delivered to or mailed to and received by the secretary of the Corporation in accordance with this Section 14 and (2) the record date for determining the stockholders entitled to vote at the annual meeting of stockholders, and must continue to own the Required Shares through such annual meeting date. A Proxy Access Eligible Stockholder shall certify in its Proxy Access Notice the number of eligible shares of outstanding capital stock of the Corporation it asserts it is deemed to own for the purposes of this Section 14. The aggregate number of stockholders whose collective stock ownership may be counted for the purpose of satisfying the Required Ownership Percentage shall not exceed twenty (20), and no stockholder may be a member of more than one group under this Section 14. Two or more funds that are part of the same family of funds under common management and investment control (a "Qualifying Fund Family") shall be treated as one stockholder for the purpose of determining the aggregate number of stockholders under this Section 14. No later than the end of the time period specified in this Section 14 for delivering the Proxy Access Notice, a Qualifying Fund Family whose stock ownership is counted for purposes of qualifying as a Proxy Access Eligible Stockholder must provide to the secretary of the Corporation documentation reasonably satisfactory to the Board of Directors, or any committee thereof, that demonstrates that the funds comprising the Qualifying Fund Family satisfy the definition thereof. Within the time period specified in this Section 14 for delivering the Proxy Access Notice, a Proxy Access Eligible Stockholder (including each stockholder, whether individually or as a member of an eligible group, and each fund comprising a Qualifying Fund Family) must provide the following information in writing to the secretary

of the Corporation: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Proxy Access Notice is delivered to or mailed to and received by the secretary of the Corporation, the Proxy Access Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Proxy Access 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 Proxy Access Eligible Stockholder's continuous ownership of the Required Shares through the record date; (ii) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act; (iii) the information and representations that are the same as those that would be required to be set forth in a Stockholder Notice of nomination pursuant to Section 11 of this Article II; (iv) the consent of each Stockholder Nominee to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected; (v) a representation that the Proxy Access Eligible Stockholder (a) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not have any such intent, (b) will maintain qualifying ownership of the Required Shares through the date of the annual meeting of stockholders, (c) 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, (d) will not distribute to any stockholder any form of proxy for the meeting other than the form distributed by the Corporation, (e) has not nominated and will not nominate for election any individual as a director at the annual meeting of stockholders other than its Stockholder Nominee(s), (f) agrees to comply with all applicable laws, rules and regulations with respect to any solicitation in connection with the meeting and will file with the Securities and Exchange Commission 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 an exemption from filing is available thereunder, and (g) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (vi) an undertaking that the Proxy Access Eligible Stockholder agrees to (a) assume all liability stemming from any legal or regulatory violation arising out of the Proxy Access Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Proxy Access Eligible Stockholder provided to the Corporation and (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 and/or efforts to have its Stockholder Nominee(s) elected by the Proxy Access Eligible Stockholder pursuant to this Section 14; and (vii) in the case of a nomination under this Section 14 by a group of stockholders, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination. For the avoidance of doubt, in the event that the Proxy Access Eligible Stockholder consists of a group of stockholders, the requirements and obligations applicable to an individual Proxy Access Eligible Stockholder that are set forth in these Bylaws, including the Minimum Holding Period, shall apply to each member of such group individually; provided, however, that the Required Ownership Percentage shall apply to the continuous ownership of the eligible group in the aggregate.

F. In the event that any information or communications provided by the Proxy Access Eligible Stockholder or any Stockholder Nominee(s) to the Corporation or its stockholders ceases to be

true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Proxy Access 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 such defect or limit the remedies (including without limitation under these Bylaws) available to the Corporation relating to any such defect.

G. The Corporation shall not be required to include, pursuant to this Section 14, a Stockholder Nominee in its proxy materials for any meeting of stockholders (i) whose election 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. exchanges upon which the shares of capital stock of the Corporation are traded, or any applicable state or federal law, rule or regulation, or any of the Corporation's publicly disclosed standards or qualifications applicable to its directors; (ii) for which the secretary of the Corporation receives a notice that a stockholder has nominated such Stockholder Nominee for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director set forth in Section 11 of this Article II; (iii) who is not independent as determined by the Board of Directors under (a) the listing standards of each principal U.S. exchange upon which the shares of capital stock of the Corporation are listed, (b) any applicable rules of the Securities and Exchange Commission and (c) any publicly disclosed standards used by the Board of Directors in determining independence of the Corporation's directors; (iv) if the Proxy Access Eligible Stockholder that has nominated such Stockholder Nominee or any 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 the Proxy Access Eligible Stockholder's Stockholder Nominee(s) or a nominee of the Board of Directors; (v) if the Stockholder Nominee is or becomes a party to any compensatory, payment, reimbursement, indemnification or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, or is receiving or will receive any such compensation, payment, reimbursement or indemnification from any person or entity other than the Corporation, in each case, in connection with service as a director of the Corporation; (vi) if the Stockholder Nominee is or becomes a party to any Voting Commitment; (vii) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914; (viii) who 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; (ix) who 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; (x) if such Stockholder Nominee or the applicable Proxy Access 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(s) made, in light of the circumstances under which they were made, not misleading, as determined by the Board of Directors or any committee thereof; (xi) whose then-current or prior business or personal interests place such Stockholder Nominee in a conflict of interest with the Corporation or any of its subsidiaries that would cause such Stockholder Nominee to violate any fiduciary duties of directors established pursuant to applicable law; or (xii) the Proxy Access Eligible Stockholder or applicable Stockholder Nominee fails to comply with its obligations, agreements, representations and/or undertakings pursuant to these Bylaws, including this Section 14.

H. Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election or (ii) becomes ineligible or unavailable for or withdraws from election at the annual meeting of stockholders, will be ineligible to be a Stockholder Nominee

pursuant to this Section 14 for the next two annual meetings of stockholders. Any Proxy Access Eligible Stockholder (including each stockholder or fund comprising a Qualifying Fund Family whose stock ownership is counted for the purposes of qualifying as a Proxy Access Eligible Stockholder) whose Stockholder Nominee is elected as a director at an annual meeting of stockholders will not be eligible to nominate or participate in the nomination of a Stockholder Nominee for the following two annual meetings of stockholders other than the nomination of such previously elected Stockholder Nominee in accordance with this Section 14. Notwithstanding anything to the contrary set forth herein, the Board of Directors or the presiding officer of the annual meeting of stockholders shall declare a nomination by a Proxy Access Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if (i) the Stockholder Nominee(s) and/or the applicable Proxy Access Eligible Stockholder shall have breached its or their obligations under this Section 14, as determined by the Board of Directors or such presiding officer or (ii) the Proxy Access Eligible Stockholder (or a qualified representative thereof) does not appear at the meeting of stockholders to present any nomination pursuant to this Section 14.

I. This Section 14 shall be the exclusive method for stockholders to include nominees for director in the Corporation's proxy materials. This Section 14 shall not prevent a stockholder from nominating a person to the Board of Directors pursuant to and in accordance with Section 11 of this Article II instead of pursuant to and in accordance with this Section 14. For the avoidance of doubt, the Corporation may in its sole discretion solicit against, and include in the proxy statement its own statements or other information relating to, any Proxy Access Eligible Stockholder and/or stockholder director nominees (including any Stockholder Nominee) for director, including any information provided to the Corporation with respect to the foregoing.

ARTICLE III
DIRECTORS

SECTION 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by the General Corporation Law of the State of Delaware or the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2. ANNUAL MEETINGS. Unless the Board of Directors shall otherwise provide, the annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place, if any, as, the annual meeting of stockholders.

SECTION 3. REGULAR MEETINGS AND SPECIAL MEETINGS. Regular meetings of the Board of Directors, other than the annual meeting, may be held without notice at such time and at such place, if any, as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the chairman of the board, the chief executive officer (if the chief executive officer is a director) or upon the written request of at least a majority of the directors then in office.

SECTION 4. NOTICE OF MEETINGS. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by law or these Bylaws. Notice of each special meeting of the Board of Directors, and of each regular and annual meeting of the Board of Directors for which notice shall be required, shall be given by the secretary as hereinafter provided in this Section 4, in which notice shall be stated the date, time and place, if any, of the meeting. Except as otherwise required by these Bylaws, such notice need not state the purposes of such meeting. Notice of any special meeting, and of any regular or annual meeting for which notice is required, shall be given to each director at least

(a) twenty-four (24) hours before the meeting if by telephone or by being personally delivered or sent by facsimile transmission, e-mail or other form of wire, wireless, or other means of electronic transmission or (b) five (5) days before the meeting if delivered by mail to the director's residence or usual place of business. Such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage prepaid, or when transmitted if sent by facsimile transmission, e-mail or other form of wire, wireless, or other means of electronic transmission. Neither the business to be transacted at, nor the purpose of, any special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 5. WAIVER OF NOTICE AND PRESUMPTION OF ASSENT. Any director may waive notice of any meeting by a written waiver signed by the director entitled to the notice or a waiver by electronic transmission by the director entitled to the notice. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

SECTION 6. CHAIRMAN OF THE BOARD, QUORUM, REQUIRED VOTE AND ADJOURNMENT. The Board of Directors shall elect, by the affirmative vote of a majority of the total number of directors then in office, a chairman of the board, who shall preside at all meetings of the stockholders and Board of Directors at which he or she is present and shall have such powers and perform such duties as the Board of Directors may from time to time prescribe. If the chairman of the board is not present at a meeting of stockholders or the Board of Directors, the chief executive officer (if the chief executive officer is a director and is not also the chairman of the board) shall preside at such meeting, and, if the chief executive officer is not present at such meeting or is not a director, a majority of the directors present at such meeting shall elect one (1) of their members to so preside. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business. Unless by express provision of an applicable law, the Certificate of Incorporation or these Bylaws a different vote is required, the vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

SECTION 7. COMMITTEES. The Board of Directors (i) may, by resolution passed by the Board of Directors, designate one or more committees, including an executive committee, consisting of one or more of the directors of the Corporation, and (ii) shall during such period of time as any securities of the Corporation are listed on a securities exchange, by resolution passed by the Board of Directors, designate all committees required by the rules and regulations of the principal U.S. exchange upon which the shares of capital stock of the Corporation are listed. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Except to the extent restricted by applicable law or the Certificate of Incorporation, each such committee, to the extent provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors. Each such committee shall serve at the pleasure of the Board of Directors as may be determined from time to time by resolution adopted by the Board of Directors or as required by the rules and regulations of the principal U.S. exchange upon which the shares of capital stock of the Corporation are listed, if applicable. Each

committee shall keep regular minutes of its meetings and report the same to the Board of Directors upon request.

SECTION 8. COMMITTEE RULES. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 9. COMMUNICATIONS EQUIPMENT. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of such board or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear and speak with each other, and participation in the meeting pursuant to this Section 9 shall constitute presence in person at the meeting.

SECTION 10. ACTION BY WRITTEN CONSENT. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of such board or committee, as the case may be, consent thereto in accordance with applicable law, and the writing or other evidence (including electronic transmission) of such consent is filed with the minutes of proceedings of the Board of Directors or committee, as applicable.

SECTION 11. RESIGNATIONS; NEWLY CREATED DIRECTORSHIPS; VACANCIES; AND REMOVALS. Any director of the Corporation may resign at any time by giving notice in writing or by electronic transmission of his resignation to the Corporation. Except as contemplated by Section 2 of Article II of these Bylaws, any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein or as contemplated by Section 2 of Article II of these Bylaws, the acceptance of such resignation shall not be necessary to make it effective. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal or any other cause shall be filled as provided in the Certificate of Incorporation. Any director may be removed as provided in the Certificate of Incorporation.

SECTION 12. COMPENSATION. The Board of Directors shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 13. RELIANCE ON BOOKS AND RECORDS. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE IV
OFFICERS

SECTION 1. NUMBER. The officers of the Corporation shall be elected by the Board of Directors and may include the chairman of the board, the chief executive officer, the president, the chief financial officer, the chief operating officer, one or more group officers (including group presidents and group financial officers), one or more vice presidents (including senior vice presidents, executive vice presidents or other classifications of vice presidents), the secretary and treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. Any number of offices may be held by the same person, except that neither the chief executive officer nor the president shall also hold the office of secretary.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the Corporation shall be elected annually by the Board of Directors. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

SECTION 3. RESIGNATIONS. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon receipt by the Corporation. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

SECTION 4. REMOVAL. Any officer or agent elected by the Board of Directors may be removed by the Board of Directors at its discretion, but such 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 because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable, except that the offices of chief executive officer and secretary shall be filled as expeditiously as possible.

SECTION 6. COMPENSATION. Compensation of all executive officers shall be approved by the Board of Directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the Corporation; provided, however, that compensation of some or all executive officers may be determined by a committee established for that purpose if so authorized by the Board of Directors or as required by applicable law or regulation, including any exchange or market upon which the Corporation's securities are then listed for trading or quotation.

SECTION 7. CHIEF EXECUTIVE OFFICER. The chief executive officer, subject to the Board of Directors, shall have general executive charge, management, and control of the properties and operations of the Corporation in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. If the Board of Directors has not elected a chairman or in the absence or inability to act of the chairman of the board, the chief executive officer shall exercise all of the powers and discharge all of the duties of the chairman of the board, but only if the chief executive officer is a director of the Corporation.

SECTION 8. PRESIDENT. The president shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation and shall perform such other duties as the Board of Directors, the chairman of the board or the chief executive

officer may, from time to time, prescribe. At the request of the chief executive officer or in his or her absence or in the event of his or her inability or refusal to act, the president shall perform the duties of the chief executive officer.

SECTION 9. CHIEF OPERATING OFFICER. The chief operating officer shall have the general powers and duties of supervision and management usually vested in the office of the chief operating officer of a corporation and shall perform such other duties as the Board of Directors, the chairman of the board or the chief executive officer may, from time to time, prescribe.

SECTION 10. GROUP OFFICERS. Each group officer shall perform all such duties as from time to time may be assigned to him or her by the Board of Directors, the chairman of the board, the chief executive officer or the president.

SECTION 11. VICE-PRESIDENTS. Each vice president shall perform all such duties as from time to time may be assigned to him or her by the Board of Directors, the chairman of the board, the chief executive officer or the president.

SECTION 12. SECRETARY AND ASSISTANT SECRETARIES. The secretary shall attend all meetings of the Board of Directors (other than executive sessions thereof) and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose or shall ensure that his or her designee attends each such meeting to act in such capacity. Under the chairman of the board's supervision, the secretary shall give, or cause to be given, all notices required to be given by these Bylaws or by law; shall have such powers and perform such duties as the Board of Directors, the chairman of the board, the chief executive officer, the president or these Bylaws may, from time to time, prescribe; and shall have custody of the corporate seal of the Corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, any of the assistant secretaries, shall in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board of Directors, the chairman of the board, the chief executive officer, the president or secretary may, from time to time, prescribe.

SECTION 13. CHIEF FINANCIAL OFFICER. The chief financial officer shall have the custody of the corporate funds and securities; shall keep full and accurate all books and accounts of the Corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the Corporation as may be ordered by the chairman of the board or the Board of Directors; shall cause the funds of the Corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the financial condition of the Corporation; shall have such powers and perform such duties incident to the position of chief financial officer as the Board of Directors, the chairman of the board, the chief executive officer, the president or these Bylaws may, from time to time, prescribe. The chief financial officer may also be the treasurer if so determined by the Board of Directors.

SECTION 14. OTHER OFFICERS, ASSISTANT OFFICERS AND AGENTS. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be assigned to him or her by the

Board of Directors, the chairman of the board, the chief executive officer, the president or a vice president.

SECTION 15. OFFICERS' BONDS OR OTHER SECURITY. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his or her duties, in such amount and with such surety as the Board of Directors may require.

SECTION 16. ABSENCE OR DISABILITY OF OFFICERS. In the case of the absence or disability of any officer of the Corporation and of any person hereby authorized to act in such officer's place during such officer's absence or disability, the Board of Directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person selected by it.

ARTICLE V
CERTIFICATES OF STOCK

SECTION 1. SHARES WITH OR WITHOUT CERTIFICATES. The Board of Directors may authorize that some or all of the shares of any or all of the Corporation's classes or series of stock be evidenced by a certificate or certificates of stock. The Board of Directors may also authorize the issue of some or all of the shares of any or all of the Corporation's classes or series of stock without certificates. The rights and obligations of stockholders with the same class and/or series of stock shall be identical whether or not their shares are represented by certificates.

SECTION 2. SHARES WITH CERTIFICATES. If the Board of Directors chooses to issue shares of stock evidenced by a certificate or certificates, each individual certificate shall include the following on its face: (i) the Corporation's name, (ii) the fact that the Corporation is organized under the laws of the State of Delaware, (iii) the name of the person to whom the certificate is issued, (iv) the number of shares represented thereby, (v) the class of shares and the designation of the series, if any, which the certificate represents, and (vi) such other information as applicable law may require or as may be lawful.

If the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations determined for each series (and the authority of the Board of Directors to determine variations for future series) may be summarized on the front or back of each certificate. Alternatively, each certificate may state on its front or back that the Corporation will furnish the stockholder this information in writing, without charge, upon request.

Each certificate of stock issued by the Corporation shall be signed (either manually or in facsimile) by the chairperson or vice-chairperson of the Board of Directors, or the president or a vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation. If the person who signed a certificate no longer holds office when the certificate is issued, the certificate is nonetheless valid.

SECTION 3. SHARES WITHOUT CERTIFICATES. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, if required by the General Corporation Law of the State of Delaware, shall, within a reasonable time after the issue or transfer of shares without certificates, send the stockholder a written statement of the information required on certificates by Section 2 of Article V of these Bylaws and any other information required by the General Corporation Law of the State of Delaware. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

SECTION 4. SUBSCRIPTIONS FOR SHARES. Subscriptions for shares of the Corporation shall be valid only if they are in writing. Unless the subscription agreement provides otherwise, subscriptions for shares, regardless of the time when they are made, shall be paid in full at such time, or in such installments and at such periods, as shall be determined by the Board of Directors. All calls for payment on subscriptions shall be uniform as to all shares of the same class or of the same series, unless the subscription agreement specifies otherwise.

SECTION 5. TRANSFERS. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by (i) the holder of record thereof, (ii) by his or her legal representative, who, upon request of the Corporation, shall furnish proper evidence of authority to transfer, or (iii) his or her attorney, authorized by a power of attorney duly executed and filed with the secretary of the Corporation or a duly appointed transfer agent. Such transfers shall be made only upon surrender, if applicable, of the certificate or certificates for such shares properly endorsed and with all taxes thereon paid. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with applicable law.

SECTION 6. LOST, DESTROYED OR STOLEN CERTIFICATES. In case of loss, mutilation or destruction of a certificate of stock, a duplicate certificate may be issued upon the terms prescribed by the Board of Directors, including provision for indemnification of the Corporation secured by a bond or other security sufficient to protect the Corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of the certificate or the issuance of the replacement certificate.

ARTICLE VI
GENERAL PROVISIONS

SECTION 1. DIVIDENDS. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, in accordance with applicable law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of applicable law and the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

SECTION 2. CHECKS, NOTES, DRAFTS, ETC. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

SECTION 3. CONTRACTS. In addition to the powers otherwise granted to officers pursuant to Article IV hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, of the Corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

SECTION 4. LOANS. Subject to compliance with applicable law (including the Sarbanes-Oxley Act of 2002, as amended), the Corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the Corporation or of its subsidiaries, including any officer or employee who is a director of the Corporation or its subsidiaries, whenever, in the judgment of

the directors, such loan, guaranty or assistance may reasonably be expected to benefit the Corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the Corporation. Nothing in this Section 4 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the Corporation at common law or under any statute.

SECTION 5. FISCAL YEAR. The fiscal year of the Corporation shall end on December 31 of each fiscal year and may hereafter be changed by resolution of the Board of Directors.

SECTION 6. CORPORATE SEAL. The seal of the Corporation shall be in such form as shall be approved by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. Notwithstanding the foregoing, no seal shall be required by virtue of this Section 6.

SECTION 7. VOTING SECURITIES OWNED BY CORPORATION. Voting securities in any other entity held by the Corporation shall be voted by the chief executive officer, the president or a vice-president, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

SECTION 8. INSPECTION OF BOOKS AND RECORDS. The Board of Directors shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

SECTION 9. SECTION HEADINGS. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

SECTION 10. INCONSISTENT PROVISIONS. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VII
AMENDMENTS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to make, alter, amend, change, add to or repeal these Bylaws by the affirmative vote of a majority of the total number of directors then in office. Any amendment, alteration, change, addition or repeal of these Bylaws by the stockholders of the Corporation shall require the affirmative vote of the holders of at least seventy-five percent (75%) of the outstanding shares of the Corporation, voting together as a class, entitled to vote on such amendment, alteration, change, addition or repeal.

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Amended and Restated as of December 19, 2017.

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