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

DIVISION OF
CORPORATION FINANCE

June 26, 2018

Josh LaGrange
Skadden, Arps, Slate, Meagher & Flom LLP
josh.lagrange@skadden.com

Re: NetApp, Inc.
Incoming letter dated May 11, 2018

Dear Mr. LaGrange:

This letter is in response to your correspondence dated May 11, 2018 and June 5, 2018 concerning the shareholder proposal (the "Proposal") submitted to NetApp, Inc. (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated May 18, 2018, May 29, 2018, May 30, 2018, May 31, 2018, June 4, 2018, June 7, 2018, June 13, 2018, June 14, 2018, June 17, 2018, June 19, 2018, June 20, 2018, June 21, 2018 and June 24, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

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

June 26, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: NetApp, Inc.
Incoming letter dated May 11, 2018

The Proposal asks the board to take the steps necessary (unilaterally if possible) to amend the bylaws and each appropriate governing document to give holders in the aggregate of 10% of the Company's outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law).

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(9). We concur that a reasonable shareholder could not logically vote in favor of both ratifying the Company's existing 25% ownership threshold for calling a special meeting and lowering the threshold to 10%. 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)(9), provided that the Company's proxy statement discloses, consistent with rule 14a-9:

- that the Company has omitted a shareholder proposal to lower the ownership threshold for calling a special meeting,
- that the Company believes a vote in favor of ratification is tantamount to a vote against a proposal lowering the threshold,
- the impact on the special meeting threshold, if any, if ratification is not received, and
- the Company's expected course of action, if ratification is not received.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

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

June 24, 2018

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

 # 15 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future proposal for its 2018 annual meeting proxy under the guise of a ratification – a vague ratification without any company stated reason to be on the ballot.

The 48th page of the company no action request is attached. It appears that that the company may need future shareholder approval in regard to its April 2018 bylaw change that was perhaps only a step to allow shareholders to call a special meeting. Without a future shareholder approval shareholders may not have any right to call a special meeting. Prior to April 2018 there was no bylaw or certificate text to allow shareholders to call a special meeting. The rule 14a-8 proposal was submitted on March 12, 2018.

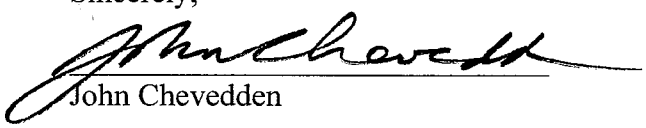
The company could thus be in a situation similar to *American Airlines Group Inc.* (April 2, 2018)

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of continuing responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:15 PM 09/13/2013
FILED 08:51 PM 09/13/2013
SRV 131089653 - 3452743 FILE

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
NETAPP, INC.

NetApp, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is NetApp, Inc. The Corporation was originally incorporated under the name "Network Appliance, Inc." The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 1, 2001.

2. Article VI of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

> "In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation. In addition, the Bylaws may be amended by the affirmative vote of holders of at least a majority of the outstanding shares of voting stock of the Corporation entitled to vote at an election of directors."

3. Article X of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

> "The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles VI, VII, VIII, IX and X of this Certificate of Incorporation may not be repealed or amended in any respect without the affirmative vote of holders of at least a majority of the outstanding voting stock of the Corporation entitled to vote at an election of directors."

4. The foregoing amendments were duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware.

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JOHN CHEVEDDEN

*** ***

June 21, 2018

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

 # 14 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future proposal for its 2018 annual meeting proxy under the guise of a ratification – a vague ratification without any company stated reason to be on the ballot.

Thus far the so-called ratification of existing special meeting provision has evolved into a new category of ratification proposal. It could be called a red flag ratification proposal as contrasted to a traditional ratification proposal.

To illustrate compare the attached EBAY ratification proposals for its auditors and in regard to the Special Meeting Provisions.

In order to get votes the EBAY proxy does not claim that failure to ratify its auditors will result in dire consequences for the company. On the other hand in order to get votes the EBAY proxy claims that changes to its current special meeting provision could result in unnecessary financial expense and disruption to company business.

Also the EBAY proxy claims the attention of EBAY directors, officers and employees, could be diverted away from performing their primary function of operating the Company's business – what could be more devastating than this?

It is like the ratification of auditors is an apples ratification proposal and the ratification of special meeting provisions is an oranges ratification proposal. And in spite of EBAY supercharging its special meeting ratification proposal by citing dire consequences – it got a pathetic 52% vote compared to its ratification of auditors which received a 98% vote totally unaided by conjured-up claims of dire consequences.

Additional information will soon be provided to show a still greater contrast between the well estblished ratification of auditors proposal and the newly developed red flag ratification in regard to special meeting provisions.

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of continuing responses.

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

Sincerely,

John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

Proposal 3 — Ratification of Appointment of Independent Auditors

Proposal

3

Ratification of Appointment of Independent Auditors

☑ The Board and the Audit Committee recommend a FOR vote for this proposal

The Audit Committee is responsible for the appointment, compensation, retention, and oversight of the independent auditors retained to audit our consolidated financial statements. We have appointed PricewaterhouseCoopers LLP ("PwC") as our independent auditors for the fiscal year ending December 31, 2018. PwC has served as our auditors since 1997. In order to assure continuing auditor independence, the Audit Committee periodically considers whether there should be a regular rotation of the independent audit firm. Further, in conjunction with the mandated rotation of the independent audit firm's lead engagement partner, the Audit Committee will continue to be directly involved in the selection and evaluation of PwC's lead engagement partner. The Board and the Audit Committee believe that the continued retention of PwC to serve as our independent auditors is in the best interests of eBay and our stockholders. We expect that representatives of PwC will be present at the Annual Meeting, will have an opportunity to make a statement if they wish, and will be available to respond to appropriate questions.

Our Bylaws do not require the stockholders to ratify the appointment of PwC as our independent auditors. However, we are submitting the appointment of PwC to our stockholders for ratification as a matter of good corporate practice. If the stockholders do not ratify the appointment, the Audit Committee will reconsider whether or not to retain PwC. Even if the appointment is ratified, the Audit Committee, in its discretion, may change the appointment at any time during the year if it determines that such a change would be in the best interests of eBay and our stockholders.

Audit and Other Professional Fees

During the fiscal years ended December 31, 2016 and December 31, 2017, fees for services provided by PwC were as follows (in thousands):

	Year Ended December 31,	
	2017	2016
Audit Fees	$ 9,309	$ 9,362
Audit-Related Fees	3,024	1,609
Tax Fees	672	70
All Other Fees (1)	497	512
Total	$ 13,502	$ 11,553

(1) For 2016 and 2017, includes approximately $0.4 million for each year, of lease payments to PwC Russia for office space in Russia pursuant to a sublease arrangement negotiated on an arm's-length basis.

"Audit Fees" consist of fees incurred for services rendered for the audit of eBay's annual financial statements, review of financial statements included in eBay's quarterly reports on Form 10-Q, other services normally provided in connection with statutory and regulatory filings, for attestation services related to compliance with the Sarbanes-Oxley Act of 2002, and services rendered in connection with securities offerings. "Audit-Related Fees" consist of fees incurred for due diligence procedures in connection with acquisitions and divestitures and consultation regarding financial accounting and reporting matters. "Tax Fees" consist of fees incurred for transfer pricing consulting services, tax planning and advisory services, and tax compliance services. "All Other Fees" consist of fees incurred for permitted services not included in the category descriptions provided above with respect to "Audit Fees," "Audit-Related Fees," and "Tax Fees," and include fees for consulting services, compliance-related services, and software licenses, as well as the lease payments described above.

The Audit Committee has determined that the non-audit services rendered by PwC were compatible with maintaining its independence. All such non-audit services were pre-approved by the Audit Committee pursuant to the pre-approval policy set forth below.

Audit Committee Pre-Approval Policy

The Audit Committee has adopted a policy requiring the pre-approval of any non-audit engagement of PwC. In the event that we wish to engage PwC to perform accounting, technical, diligence, or other permitted services not related to the services performed by PwC as our independent registered public accounting firm, our internal finance personnel will prepare a summary of the proposed engagement, detailing the nature of the engagement, the reasons why PwC is the preferred provider of such services, and the estimated duration and cost of the engagement. This information will be provided to our Audit Committee or a designated Audit Committee member, who will evaluate whether the proposed engagement will interfere with the independence of PwC in the performance of its auditing services and decide whether the engagement will be permitted.

On an interim basis, any non-audit engagement may be presented to the Chair of the Audit Committee for approval and to the full Audit Committee at its next regularly scheduled meeting.

Proposal 4 — Management Proposal Regarding Ratification of Special Meeting Provisions in the Company's Certificate of Incorporation and Bylaws

Proposal

4

Management Proposal Regarding Ratification of Special Meeting Provisions in the Company's Certificate of Incorporation and Bylaws

☑ The Board recommends a FOR vote for this proposal

The Board is seeking stockholder ratification of certain provisions of our Amended and Restated Certificate of Incorporation (the "Charter") and Bylaws that grant stockholders who own at least 25% of the Company's outstanding shares of capital stock and satisfy other requirements the ability to direct the Company to call a special meeting of stockholders (the "Special Meeting Threshold" and together with the related provisions the "Special Meeting Provisions"). The Company received a stockholder proposal in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, asking the Board to take the necessary steps to amend our governing documents to give holders of 10% of the Company's outstanding shares of common stock the right to call a special meeting (the "Stockholder Proposal"). As allowed by the staff of the Division of Corporate Finance of the Securities and Exchange Commission, the Company omitted the Stockholder Proposal from this Proxy Statement based on the Company's plans to submit this management proposal seeking ratification of the Company's current Special Meeting Threshold and Special Meeting Provisions. The Company believes that this management proposal is an effective means to obtain stockholder viewpoints and engage with stockholders on the issue of an appropriate Special Meeting Threshold.

The Company believes that a vote in favor of ratifying the Company's current Special Meeting Threshold and Special Meeting Provisions is tantamount to a vote against the Stockholder Proposal.

At the 2012 annual meeting of stockholders ("2012 Annual Meeting"), the Board recommended that the Company's stockholders approve and adopt a management proposal relating to the Special Meeting Provisions. This management proposal was overwhelmingly approved by the Company's stockholders at that annual meeting, with over 99% of stockholders present at the meeting (or represented by proxy) and entitled to vote on the proposal voting in favor of it. Following the meeting, the Company filed the Charter and Bylaws (as in effect at the time) including the Special Meeting Provisions as exhibits to the Company's Current Report on Form 8-K on April 27, 2012.

The Board is hereby requesting that the Company's stockholders ratify the Special Meeting Provisions that were adopted by the Company following stockholders' approval in favor of such provisions at the Company's 2012 Annual Meeting.

If stockholders do not ratify the Special Meeting Threshold and Special Meeting Provisions, the existing Special Meeting Threshold will remain in place. In addition, the Board will consider the results of the vote and engage with our stockholders to solicit feedback regarding the current Special Meeting Threshold.

Ratification of the Special Meeting Provisions

The Special Meeting Provisions, which are set forth in Article VI, Section E of the Charter and Article I, Section 1.3 of the Bylaws, and were described in the Company's proxy statement for the 2012 Annual Meeting, may be summarized as follows:

- One or more stockholders of record that together have continuously held (for their own account or on behalf of others) beneficial ownership of at least 25% of the outstanding common stock of the Company for at least 30 days as of the date such request is delivered have the ability to require the Company to call a special meeting of its stockholders.
- Stock ownership is determined under a "net long position" standard to provide assurance that stockholders seeking to call a special meeting possess both (i) full voting and investment rights pertaining

to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares.

- Stockholders seeking to call a special meeting would be required to provide information similar to the information required for stockholder nominations at annual meetings under the Bylaws, in addition to eligibility information specific to the right of stockholders to call special meetings. Further, stockholders seeking to call a special meeting would be required to provide a statement regarding the specific purpose(s) of the meeting and the matters proposed to be acted on at it.
- The date of any special meeting requested must be not more than 90 days after the date on which the request is validly delivered to the Company.
- The special meeting right is subject to certain limitations designed to prevent duplicative and unnecessary meetings. A special meeting request would not be valid if:
  - the proposed meeting relates to an item of business that is the same or substantially similar to any item of business that is to be brought before a meeting of stockholders to be held within 60 days of receiving the request for a special meeting;
  - an otherwise valid request for a special meeting is delivered within a period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 days after the first anniversary of the date of the immediately preceding annual meeting;
  - the proposed meeting relates to an item of business that is the same or substantially similar to an item of business that was presented at any meeting of stockholders held within 120 days prior to the delivery of a special meeting request;
  - the proposed meeting relates to an item of business that is not a proper subject for action by the stockholders under applicable law; or
  - the special meeting request was made in a manner that violates Regulation 14A under the Exchange Act or other applicable law, or otherwise does not comply with the Special Meeting Provisions.

The above summary is subject, in all respects, to the Special Meeting Provisions of our Charter and Bylaws, which are attached to this Proxy Statement as Appendix A and Appendix B, respectively.

Board Consideration of Appropriate Stockholder Special Meeting Rights

The Board evaluated a number of different factors in adopting the existing right of stockholders to call a special meeting, as further described in the Company's proxy statement for the 2012 Annual Meeting. The Board continues to believe that a 25% ownership threshold to request a special meeting strikes a reasonable balance between enhancing stockholder rights and protecting against the risk that a small minority of stockholders, including stockholders with special interests, could call one or more special meetings that could result in unnecessary financial expense and disruption to our business. The Board believes that special meetings should only be called to consider extraordinary events that are of interest to a broad base of stockholders and that cannot be delayed until the next annual meeting. Additionally, preparing for a stockholder meeting requires significant attention of our directors, officers and employees, diverting their attention away from performing their primary function of operating the Company's business in the best interests of our stockholders. Likewise, the Board believes that only stockholders with a true economic and non-transitory interest in the Company should be entitled to utilize the special meeting mechanism.

25% Special Meeting Ownership Threshold Consistent with Market Practice

The 25% ownership threshold is a common threshold for special meeting rights at public companies, among those companies that provide for this right. To put this in perspective, approximately 59% of S&P 500 companies give stockholders the right to call a special meeting. Of those companies, 67% have a special meeting ownership threshold that is equal to or higher than that of the Company. In short, the Company's stockholders have a right that is equal to or more expansive than that of 80% of S&P 500 companies (when including those companies that do not provide such rights at all).

Corporate Governance Practices

The Board believes that the current Special Meeting Provisions should be considered in the context of the Company's overall corporate governance practices, including the stockholder rights available under its Bylaws and Charter, applicable law, and the Company's demonstrated commitment to stockholder engagement and responsiveness to stockholder concerns. Our corporate governance practices are highlighted on page 5 of this Proxy Statement.

In addition to the existing right of stockholders to call a special meeting at the 25% ownership threshold, stockholder approval is required for many key corporate actions before action may be taken. Under Delaware law and the NASDAQ Stock Market rules, the Company must submit certain important matters to a stockholder vote.

Additionally, our Bylaws provide stockholders with the ability to nominate candidates to the Board both through traditional processes and our proxy access procedures. Under existing law, stockholders may request the Company to include stockholder proposals in proxy materials to be considered by our full stockholder base. Directors are elected by majority vote on an annual basis, and stockholders have multiple avenues of communication to the Board.

Given the existing right of stockholders to call a special meeting, coupled with the Company's strong corporate governance policies, the Board strongly recommends that stockholders ratify the existing Special Meeting Provisions.

The Board of Directors Recommends a Vote **FOR** Proposal 4.

Unless you specify otherwise, the Board intends the accompanying proxy to be voted FOR this item.

JOHN CHEVEDDEN

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June 20, 2018

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

 # 13 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future proposal for its 2018 annual meeting proxy under the guise of a ratification – a vague ratification without any company stated reason to be on the ballot.

A rule 14a-8 proposal can be easily bumped from the ballot if it is vague. However the company is asking for a management benefit in return for a proposal that is still blank. Plus the blank company proposal has no stated reason to be on the ballot.

There is no indication that the company ratification proposal will give shareholders the clarifying options of:
The current special meeting provisions are just right.

The current special meeting provisions make it too hard for shareholders to call a special meeting.

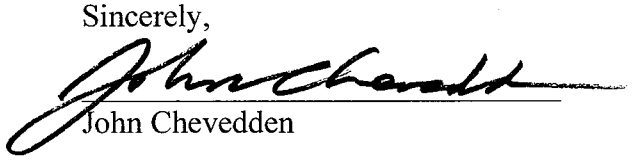
The current special meeting provisions make it too easy for shareholders to call a special meeting.

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of continuing responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

*** JOHN CHEVEDDEN

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June 19, 2018

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

 # 12 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future proposal for its 2018 annual meeting proxy under the guise of a ratification – without any company stated reason to be on the ballot.

Ratification of a generally accepted version of an existing shareholder right to call a special meeting triggered large no-confidence votes from shareholders during the 2018 proxy season. Five of the 6 special meeting ratification proposals received a greater than 40% no-confidence votes from shareholders in 2018.

A "no-confidence vote from shareholders" is a phrase used by the Alliance Advisors Newsletter, June 2018, *2018 Proxy Season Brings Some Surprises*. This is an example of the use of "no-confidence vote from shareholders," – "In a surprising upset, General Electric's auditor for the past century— KPMG—received a 35.1% no-confidence vote from shareholders." In other words the GE auditors received about 64% approval.

This Newsletter also said, "Over the past three years, auditor ratification has averaged 98.7% support and in only 0.3% of cases did shareholder opposition exceed 25% of the votes."

Thus the ratification of a generally accepted version of a shareholder right to call a special meeting is a radical failure compared to a typical ratification proposal in regard to the auditors.

Plus this is a sharp contrast to the majority shareholder votes for 7 rule 14a-8 proposals in 2018 to lower the existing stock ownership threshold (typically 25%) to call a special meeting.

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of continuing responses.

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

Sincerely,

John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

Item 5.07. Submission of Matters to a Vote of Security Holders.

(a) General Electric Company ("GE" or the "Company") held its annual meeting of shareowners on April 25, 2018 (the "Annual Meeting").

(b) At the Annual Meeting, shareowners elected all of the Company's nominees for director; approved our named executives' compensation ("Say on Pay"); approved an amended GE International Employee Stock Purchase Plan ("ESPP Approval"); and ratified the appointment of KPMG LLP as the Company's independent auditor for 2018 ("Auditor Ratification"). The shareowners did not approve any of the shareowner proposals, which are listed below.

Election of Directors

	For	Against	Abstain	Non-Votes
1. Sébastien M. Bazin	4,320,551,913	480,845,074	29,272,058	1,618,938,088
2. W. Geoffrey Beattie	4,384,867,904	417,629,048	28,169,429	1,618,940,752
3. John J. Brennan	4,462,515,566	343,437,145	24,713,670	1,618,940,752
4. H. Lawrence Culp, Jr.	4,717,114,030	87,464,430	26,090,585	1,618,938,088
5. Francisco D'Souza	4,562,034,101	243,154,360	25,477,920	1,618,940,752
6. John L. Flannery	4,533,802,404	254,412,042	42,454,599	1,618,938,088
7. Edward P. Garden	4,703,302,412	101,767,140	25,599,493	1,618,938,088
8. Thomas W. Horton	4,636,263,029	166,034,445	28,371,571	1,618,938,088
9. Risa Lavizzo-Mourey	4,607,071,929	198,580,294	25,016,822	1,618,938,088
10. James J. Mulva	4,417,425,346	386,212,527	27,028,508	1,618,940,752
11. Leslie F. Seidman	4,720,762,969	85,554,031	24,352,045	1,618,938,088
12. James S. Tisch	4,273,520,868	532,690,278	24,455,235	1,618,940,752

Management Proposals

	For	Against	Abstain	Non-Votes
1. Say on Pay	4,381,817,430	403,043,694	45,664,941	1,619,081,068
2. ESPP Approval	4,677,013,600	120,524,504	33,124,141	1,618,944,888
3. Auditor Ratification	4,164,893,588	2,253,604,783	30,934,937	173,825

→ 35.1 %

Shareowner Proposals

	For	Against	Abstain	Non-Votes
1. Independent Chair	1,972,422,213	2,817,138,246	40,944,575	1,619,102,099
2. Cumulative Voting	610,492,031	4,169,025,618	51,144,846	1,618,944,638
3. Deduct Impact of Stock Buybacks from Executive Pay	312,901,317	4,470,546,187	47,077,161	1,619,082,468
4. Political Lobbying and Contributions	988,054,419	3,673,870,769	168,719,562	1,618,962,383
5. Buyback Report	269,188,062	4,524,192,767	37,131,886	1,619,094,418
6. Written Consent	1,234,496,827	3,540,917,750	55,247,918	1,618,944,638

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JOHN CHEVEDDEN

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June 17, 2018

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

 # 11 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future proposal for its 2018 annual meeting proxy under the guise of a ratification.

The company gives no reason for its undrafted future proposal. The company simply "plans" a proposal per that attached page section of its no action request.

Since the company does not give a reason for its proposal it could at least be accommodating enough to tell shareholders in its proxy that if shareholders want at least 25% of shares to be able call a special meeting then shareholders can vote for the company proposal. If shareholders also want less than 25% of shares to be able to call a special meeting then they can vote both for the company proposal and for the rule 14a-8 proposal.

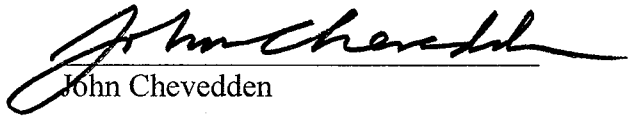
A company proposal that has no stated reason to be in the proxy should not interfere with a rule 14a-8 proposal that has a reason to be in the proxy.

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of continuing responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

The Company plans to submit to its shareholders at the 2018 Annual Meeting, and include in its Proxy Materials, a proposal that shareholders ratify the retention of the Applicable Provisions (as defined below), including the 25% Ownership Threshold (as defined below) (the "Company Proposal"). The "Applicable Provisions" are the provisions contained in Article VIII of the Company's Certificate of Incorporation, as amended (the "Charter") and Sections 5 and 14 of Article II of the Company's Bylaws, as amended and restated (the "Bylaws").

***

JOHN CHEVEDDEN

***

June 14, 2018

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

 # 10 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future anti-rule 14a-8 proposal for its 2018 annual meeting proxy under the guise of a ratification.

The is an example of a 61% ratification vote being cited as a vote indicating a problem. According to Alliance Advisors Newsletter, June 2018
"2018 Proxy Season Brings Some Surprises":

"Shareholders and proxy advisors are also keeping a watchful eye on changes to compensation plans resulting from the repeal of the performance-based exception under IRS Code Section 162(m). One of the more high-profile cases was Netflix, which announced last December that it was scrapping performance-based bonuses for higher executive salaries. The company is also facing a shareholder derivative complaint that its prior bonuses were rigged with easily attainable performance goals to take advantage of the tax deduction. Investors gave cautious approval to its SOP proposal with 61.2% support."

In 2018 seven companies obtained no action relief by announcing an upcoming ratification proposal that was triggered solely by the submittal of a rule 14a-8 proposal.

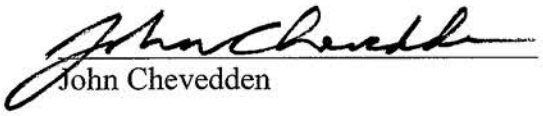
After obtaining no action relief ITT Corporation withdrew their plans for a ratification proposal. Then 5 of the 6 ratification proposals did not even obtain the same level of support as the troubled 61% vote for Netflix executive pay. And some of these lame votes could have been failed votes if not for management special solicitations (paid for by shareholders but without their consent).

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

ENGINEERED FOR LIFE

NOTICE OF 2018 ANNUAL MEETING OF SHAREHOLDERS

MEETING INFORMATION
WEDNESDAY, MAY 23, 2018
9:00 a.m. Eastern Time

ITT Inc.
1133 Westchester Avenue
White Plains, NY 10604

ITEMS OF BUSINESS

1. To elect the 11 nominees named in the attached Proxy Statement to the Board of Directors, to serve until the 2019 annual meeting of shareholders or until their respective successors shall have been duly elected and qualified.
2. To ratify the appointment of Deloitte & Touche LLP as the Company's independent registered public accounting firm for the 2018 fiscal year.
3. To conduct an advisory vote on the compensation of the Company's named executive officers.
4. To approve an amendment to ITT's Articles of Incorporation to reduce the threshold required for shareholders to call a special meeting.
5. To transact such other business as may properly come before the Annual Meeting or any adjournments or postponements thereof.

WHO CAN VOTE, RECORD DATE

Holders of record of ITT Inc. common stock at the close of business on March 26, 2018 are entitled to vote at the Annual Meeting and any adjournments or postponements thereof.

MAILING OR AVAILABILITY DATE

Beginning on or about April 9, 2018, this Notice of 2018 Annual Meeting of Shareholders and the attached Proxy Statement are being mailed or made available, as the case may be, to shareholders of record on March 26, 2018.

ABOUT PROXY VOTING

It is important that your shares be represented and voted at the Annual Meeting. If you are a registered shareholder, you may vote online at *www.proxyvote.com*, by telephone or by mailing a proxy card. You may also vote in person at the Annual Meeting. If you hold shares through a bank, broker or other institution, you may vote your shares by any method specified on the voting instruction form that they provide. See details under "How do I vote?" under "Additional Information about Proxy Statement and Voting." We encourage you to vote your shares as soon as possible.

By order of the Board of Directors,

Lori Marino

LORI B. MARINO
Corporate Secretary
April 9, 2018

REVIEW YOUR PROXY STATEMENT AND VOTE IN ONE OF FOUR WAYS:



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

June 13, 2018

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

 # 9 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a future anti-rule 14a-8 proposal for its 2018 annual meeting proxy under the guise of a ratification.

According to Alliance Advisors Newsletter, Jun. 2018
"2018 Proxy Season Brings Some Surprises":
This use of the 14a-8(i)(9) exclusion produced an outcry from both the proponents and the Council of Institutional Investors (CII) who accused the companies of "gaming the system." Proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis apparently agreed by recommending against the management advisory resolutions and, in many cases, the governance committee chairs as well. To date, all of the company resolutions have received approval, albeit by a narrow margin in some instances.

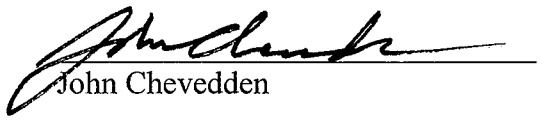
Apparently a notable percentage of this new breed of ratification proposal results in negative recommendations for governance committee chairs. Negative recommendations for a governance committee chair is rare when a ratification of an auditor or a ratification of executive pay is placed on the proxy ballot unless a company had serious problems in these areas.

A response to the company's narrowly focused June 5, 2018 letter will be submitted later.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

JOHN CHEVEDDEN

*** ***

June 7, 2018

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

 # 8 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a planned anti-rule 14a-8 proposal for its 2018 annual meeting proxy under the guise of a ratification.

The 2018 special meeting ratification votes are miserably low compared to the ratification votes on established topics such as auditors and say on pay. Most special meeting ratification votes were in the range of 52% to 59% and even these low votes can be propped up by a special solicitation and/or a sweetener like a bylaw change.

But as miserably low as these votes are they have no consequence.

If a say on pay ratification received a 52% vote – propped up by a special solicitation – a board of directors would probably take significant action. If not the board would be vulnerable to shareholder blowback. And when was the last time an auditor was ratified with a 52% vote?

But miserably low ratification votes for the status quo in regard to calling a special meeting has no consequence based on every proxy that has so far had such an empty-suit ratification proposal.

And lower than these low votes is what happened after *ITT Inc.* (February 22, 2018). ITT apparently feared a failed vote and changed its ratification proposal into a proposal to lower the stock ownership threshold for shareholders to call a special meeting – approved by an impressive 99.7% vote.

A response to the company's narrow focus June 5, 2018 letter will be submitted later.

This is one part in a series of responses.

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

Sincerely,

John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

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

On May 25, 2018, ITT Inc. (the "Company" or "ITT") announced that Steven C. Giuliano, the Company's Vice President and Chief Accounting Officer, has communicated his intention to resign from his position with the Company for personal reasons.

Mr. Giuliano has agreed to continue to serve as Chief Accounting Officer of the Company for a transition period to be agreed upon with the Company, while a search for a permanent successor is under way.

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

On May 23, 2018, the Company adopted Amended and Restated Articles of Incorporation in connection with the approval by the Company's shareholders of an amendment to ITT's Amended and Restated Articles of Incorporation as described in Item 5.07 below. In conjunction with the adoption of the Amended and Restated Articles of Incorporation, the Company's Board of Directors adopted Amended and Restated By-laws, effective as of May 23, 2018, in order reduce to 25% the threshold that is required for shareholders to call a special meeting of shareholders. The Amended and Restated Articles of Incorporation and the Amended and Restated By-laws of ITT Inc. are attached hereto as Exhibits 3.1 and 3.2, respectively, and are incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 23, 2018, ITT held its annual meeting of shareholders (the "Annual Meeting"). The following votes were taken at the Annual Meeting.

1. At the Annual Meeting, the persons whose names are set forth below were elected as directors, constituting the entire Board of Directors. Relevant voting information for each person follows:

	FOR	AGAINST	ABSTENTIONS	BROKER NON-VOTES
Orlando D. Ashford	75,272,753	1,328,252	119,550	4,592,431
Geraud Darnis	76,419,002	170,646	130,907	4,592,431
Donald DeFosset, Jr.	76,023,813	564,307	132,435	4,592,431
Nicholas C. Fanandakis	76,416,614	171,283	132,658	4,592,431
Christina A. Gold	74,572,322	2,041,643	106,590	4,592,431
Richard P. Lavin	74,802,560	1,797,918	120,077	4,592,431
Frank T. MacInnis	76,100,311	500,475	119,769	4,592,431
Mario Longhi	75,048,785	1,551,208	120,562	4,592,431
Rebecca A. McDonald	75,312,412	1,303,067	105,076	4,592,431
Timothy H. Powers	76,350,748	238,157	131,650	4,592,431
Denise L. Ramos	76,391,582	199,778	129,195	4,592,431

2. Ratification of Appointment of the Independent Registered Public Accounting Firm. The appointment of Deloitte & Touche LLP as the Company's independent registered public accounting firm for 2018 was ratified by a vote of 79,396,847 shares voting for the proposal, 1,805,178 shares voting against the proposal and 110,961 shares abstaining from the vote on the proposal.

3. Advisory Vote on 2017 Named Executive Officer Compensation. The proposal for approval of the 2017 compensation of the Company's named executive officers was approved by a vote of 64,986,868 shares voting for the proposal, 11,564,544 shares voting against the proposal, 169,143 shares abstaining from the vote on the proposal and 4,592,431 broker non-votes.

4. Approval of an Amendment to ITT's Articles of Incorporation to Reduce the Threshold Required for Shareholders to Call a Special Meeting. The proposal for approval of an amendment to ITT's Articles of Incorporation to reduce the threshold required for shareholders to call a special meeting was approved by a vote of 76,415,042 shares voting for the proposal, 191,020 shares voting

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301

TEL: (650) 470-4500
FAX: (650) 470-4570
www.skadden.com

DIRECT DIAL
650-470-4575
DIRECT FAX
650-798-6520
EMAIL ADDRESS
JOSH.LAGRANGE@SKADDEN.COM

FIRM/AFFILIATE OFFICES
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NEW YORK
WASHINGTON, D.C.
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

June 5, 2018

BY E-MAIL (shareholderproposals@sec.gov)

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

RE: NetApp, Inc. – 2018 Annual Meeting
Supplement to Letter dated May 11, 2018
Relating to Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

We refer to our letter dated May 11, 2018 (the "No-Action Request"), pursuant to which we requested on behalf of NetApp, Inc., a Delaware corporation (the "Company"), that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") concur that the Company may exclude the shareholder proposal and supporting statement (the "Shareholder Proposal") submitted by John Chevedden (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2018 annual meeting of shareholders (the "2018 proxy materials").

This letter is in response to the letter to the Staff, dated May 30, 2018, submitted on behalf of the Proponent (the "Proponent's Letter"), and supplements the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter is also being sent to the Proponent. While the Proponent has delivered at least six additional letters nominally concerning the No-Action Request, those additional

letters do not appear to address the facts or legal analysis set forth in the No-Action Request. Accordingly, the Company does not presently expect to respond to those additional letters, but that should not be taken as acceptance of the accuracy or relevance of any statements made therein, and the Company reserves the right to respond to those additional letters (and any further correspondence from the Proponent) in the future. The Proponent's Letter draws attention to an irrelevant scenario where a company, United Rentals, Inc. ("United Rentals"), did not request no-action relief for a special meeting shareholder proposal, but chose instead to present two similar proposals to shareholders at its annual meeting. The comparison implied by the Proponent's Letter is not only irrelevant, but the suggestion that it is similar to the instant matter is also erroneous.

In the Proponent's example, shareholders had no right to call a special meeting, and United Rentals presented two proposals regarding the creation of such a right, each to be the subject of a vote at that company's annual meeting. One was a shareholder proposal, which was substantially similar to the Shareholder Proposal here, that requested the board amend its bylaws and governing documents to give shareholders with 10% of the company's common stock the power to call a special meeting. The other proposal, submitted by United Rentals management, asked shareholders to approve an amendment to the company's certificate of incorporation to allow an amendment to the company's bylaws to implement a right for shareholders with at least 25% of the company's common stock to call a special meeting. Notably, the management proposal was necessary to remove a limitation on shareholders' ability to call special meetings before any special meeting provision could even be adopted. Thus, the management proposal and the shareholder proposal sought similar objectives—to give shareholders the ability to call special meetings where no such right previously existed.

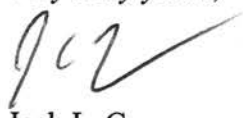
Although United Rentals did not seek relief to exclude the shareholder proposal identified by the Proponent, we are aware that the Staff denied such relief on at least one other occasion with some apparent similarity to the Proponent's example. See, e.g., American Airlines Group Inc. (Apr. 2, 2018). However, the United Rentals and American Airlines Group Inc. circumstances are simply not comparable to the facts in the instant matter. In those other situations, where shareholders were voting on (or proposed to vote on) provisions to create such a right, the fact that a shareholder may have had a *preference* between the two proposals did not mean that there was any *conflict* between the them. Here, in contrast, the Company is explicitly seeking affirmation that its existing shareholder right to call a special meeting be retained, which directly conflicts with the Shareholder Proposal to alter the terms of such right. In the Company's situation, the facts are thus significantly different from those described above regarding United Rentals and from those set forth in American

Airlines Group Inc. In the Company's circumstances, relief to exclude the Shareholder Proposal is consistent with both Staff Legal Bulletin 14H ("SLB 14H") and prior no-action letters

As described in SLB 14H, a proposal will be viewed as directly conflicting for purposes of Rule 14a-8(i)(9) if the conflict between the two proposals is such that the company's shareholders could not "logically vote for" both proposals. Here, the Shareholder Proposal requests that the Company implement a special meeting provision that would lower the existing ownership threshold to 10%, which is in direct conflict with the Company Proposal seeking ratification of the existing ownership threshold of 25%. When a company allows shareholders to call special meetings and a shareholder proposal is introduced in competition with a management proposal affirming the existence of that right as currently in effect, then a shareholder cannot logically vote in favor of both proposals. See Skyworks Solutions, Inc. (Mar. 23, 2018) (concurring in exclusion under Rule 14a-8(i)(9) of a proposal requesting adoption of a 10% threshold for shareholders to call a special meeting where the company planned to submit a competing management proposal that sought ratification of the company's existing special meeting provision, which had a 25% ownership threshold) ("Skyworks"). Similar to Skyworks and other no-action letters previously cited in the No-Action Request, the Shareholder Proposal would directly conflict with the Company Proposal, and submitting both proposals to shareholders at the 2018 Annual Meeting would present alternative and conflicting decisions for shareholders, creating the potential for inconsistent and ambiguous results. Accordingly, consistent with the letters cited above and in the No-Action Request, the Company believes the Shareholder Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(9).

For the reasons stated above and in the No-Action Request, we respectfully request that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (650) 470-4575.

Very truly yours,



Josh LaGrange

Enclosures

cc: Elizabeth O'Callahan
Vice President, Legal Department
NetApp, Inc.
1395 Crossman Avenue
Sunnyvale, CA 94089

John Chevedden
***

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

June 4, 2018

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

 # 7 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of a planned anti-rule 14a-8 proposal for its 2018 annual meeting proxy under the guise of a ratification.

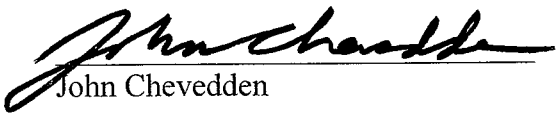
The company claims it needs relief so that it can devise a company proposal in the next 2 months to be electively worded to conflict with the rule 14a-8 proposal that was submitted almost 3-months ago.

Attached is an article on the methodology of the company. It includes words such as
"spoiler tactic"
"gamesmanship"
"trying to neuter a burgeoning campaign to strengthen investor oversight of management"
"less support than is typical for management proposals"
and recent "contentious vote" at JPM.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

%%%

%%%

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

May 31, 2018

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

 # 6 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of an anti-rule 14a-8 proposal for its 2018 annual meeting proxy under the guise of a ratification.

EBAY received only a 53% vote for ratification of their special meeting status quo on May 30, 2018 – a very low vote for a company ratification proposal.

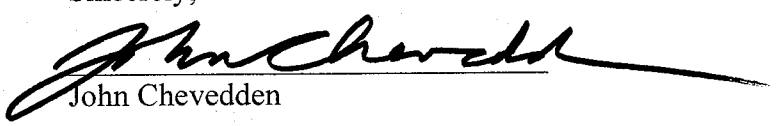
At the same meeting say on pay received a 92% vote (one outside report said CEO pay was $12 million in 2017).
The auditors received a 98% vote.

To get to 53% EBAY did a special solicitation devoted only to the ratification proposal which included this announcement:
"On May 14, 2018, the Board adopted certain amendments to the special meeting provisions in the Bylaws. These amendments, by reducing certain limitations designed to prevent duplicative and unnecessary meetings, expand the circumstances under which stockholders may require the Company to call a special meeting."

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

JOHN CHEVEDDEN

*** ***

May 30, 2018

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

 # 5 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request that contained the company announcement of an anti-rule 14a-8 proposal for its 2018 annual meeting proxy.

The company does not claim that it lacks the ability to draft its ratification proposal so that it does not conflict with the rule 14a-8 proposal.

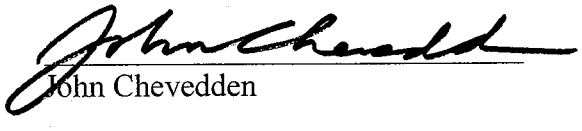
The company does not claim that it lacks the ability, that other companies have shown, in asking shareholders to vote at the same meeting on a company proposal and a rule 14a-8 proposal – each in regard to calling special shareholder meetings but with different stock ownership requirement thresholds. Attached is a 2017 example of a company proposal and a shareholder proposal on the special meeting topic that were voted at the same meeting.

The company thus claims it needs relief from a needless conflict that it is responsible for creating.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

Requirements.

For	Against	Abstain	Broker Non-Votes
65,154,884	100,285	242,545	6,424,500

Proposal 6. Stockholder Proposal on Special Shareowner Meetings. 10% Ownership Threshold

For	Against	Abstain	Broker Non-Votes
33,061,939	32,143,742	292,033	6,424,500

Proposal 7. Company Proposal to Amend the Company's Restated Certificate of Incorporation to Allow Amendment to By-Laws Granting Stockholders Holding 25% or More the Ability to Call Special Meetings of Stockholders.

For	Against	Abstain	Broker Non-Votes
57,243,381	7,998,635	255,698	6,424,500

Item 9.01 Financial Statements and Exhibits.

3.1 Certificate of Amendment, dated May 4, 2017, to the United Rentals, Inc. Restated Certificate of Incorporation (removing supermajority voting provisions)

3.2 Certificate of Amendment, dated May 4, 2017, to the United Rentals, Inc. Restated Certificate of Incorporation (removing limitations on stockholders' ability to call special meetings of stockholders)

3.3 Third Amended and Restated Certificate of Incorporation of United Rentals, Inc.

3.4 Amended and Restated By-Laws of United Rentals, Inc.

SIGNATURES

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

Date: May 4, 2017

UNITED RENTALS, INC.

By: /s/ Craig A Pintoff
Name: Craig A. Pintoff
Title: Executive Vice President, Chief Administrative and Legal Officer

UNITED RENTALS (NORTH AMERICA), INC.

By: /s/ Craig A Pintoff
Name: Craig A. Pintoff
Title: Executive Vice President, Chief Administrative and Legal Officer

*** JOHN CHEVEDDEN ***

May 29, 2018

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

 # 4 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request.

The company has not offered to publish the rule 14a-8 proposal as an exhibit in its definitive proxy in order that shareholders can have more information.

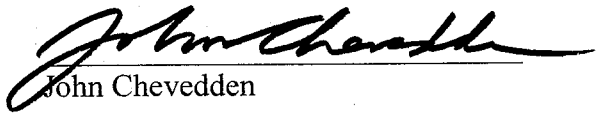
The company has not offered to publish a link to this no action request in its definitive proxy in order that shareholders can have more information if they are familiar with reviewing no action request files and know how to find the key information quickly.

The company has not offered to publish its proposed ratification item without any recommendation. Attached is an example of a company publishing a "No recommendation" in regard to a ballot item.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

Reminder to Vote:
Invesco Ltd.
Annual Shareholder Meeting

Dear Colleagues:

The voting deadline for Invesco's 2018 Annual General Meeting of Shareholders is rapidly approaching. **Our records indicate that you have not voted your unvested stock awards. It is very important that you vote the unvested stock awarded to you by Invesco as well as any shares you otherwise may own. The process is easy and takes only a few minutes.**

This year our shareholders are considering four important proposals. The matters to be voted on, as well as our Board of Directors' recommendations for each proposal, are as follows:

Proposal	Recommendation
Election of nine directors to the Board of Directors	For
Advisory vote regarding the Company's named executive officer compensation	For
Appointment of PricewaterhouseCoopers LLP as auditors	For
Shareholder proposal regarding the elimination of voting standards of greater than a majority cast	No recommendation

Instructions for voting your unvested stock awards:

If you have misplaced your voting information, especially your unique voter identification number known as your "Control Number," please contact our transfer agent, Computershare, at either of the following numbers or email:

Christopher Coleman
Computershare
(201) 680-4431
or
(201) 978-4392
or
christopher.coleman2@computershare.com

You may vote your unvested stock awards online or by telephone at:

www.envisionreports.com/IVZ
or by calling
1-866-641-4276
(outside of the U.S. and Canada call 201-680-6688).

Instructions for voting your Invesco common shares:

If you own shares in other forms, we urge you to ensure that you have voted them as well. **Please contact the broker-dealer where your Invesco shares are held for instructions on how to vote those shares.**

Please refer to the Proxy Statement for the 2018 Annual General Meeting of Shareholders for more detailed information on each proposal. The Proxy Statement can be accessed on the Investor Relations page of Invesco's web site at www.invesco.com.

Thank you.

JOHN CHEVEDDEN
***
***

May 29, 2018

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

 # 3 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request.

So-called precedents such as AES put rule 14a-8 proponents and their issues at risk.

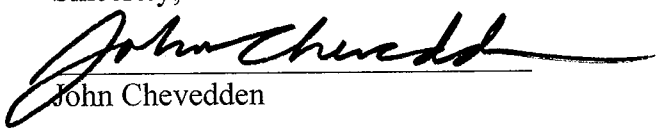
For the first time in modern securities regulation the submittal of a rule 14a-8 proposal has the potential of triggering a one-sided proxy argument against the very topic of the rule 14a-8 proposal. For the first time the submittal of a rule 14a-8 proposal can be counter productive to the topic of the rule 14a-8 proposal.

Previously if a proposal was excluded the worst that could happen was that other shareholders would not be informed in regard to the topic of the rule 14a-8 proposal. Now proponents have to contend with the downside that they will have inadvertently triggered that all shareholders will receive a one-sided proxy argument against the very topic of their proposal.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

JOHN CHEVEDDEN

*** ***

May 29, 2018

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

 # 2 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request.

The company did not address the meaning of the lackluster ratification votes recently published as an Item 5.07 for its so-called precedents such as AES.

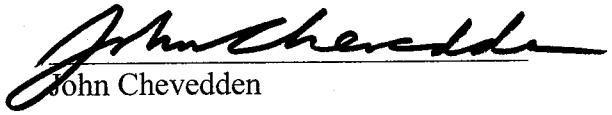
The company has not claimed any benefit to shareholders of a ratification proposal which only tries to spruce up the rational for the status quo as opposed to a rule 14a-8 proposal which presents both sides of an issue.

The company has not even offered to publish the rule 14a-8 proposal as an exhibit in its definitive proxy.

This is one part in a series of responses.

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

Sincerely,



John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

*** JOHN CHEVEDDEN ***

May 18, 2018

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

 # 1 Rule 14a-8 Proposal
NetApp, Inc. (NTAP)
Special Shareholder Meetings
John Chevedden

Ladies and Gentlemen:

This is in regard to the May 11, 2018 no-action request.

Skyworks Solutions Inc. (SWKS) is one example of duplicity in the process of using a last minute ratification of the status quo to bump an earlier rule 14a-8 proposal that would improve a shareholder right. Skyworks Solutions said its ratification proposal was giving its shareholders an "opportunity."

Skyworks Solutions essentially said in its 2018 proxy that a shareholder right to call a special meeting is a dangerous right that must be loaded with restrictions.

Skyworks Solutions then ended up doing a special solicitation to prop up its shareholder vote – which ended up as barely passing at 52%. Apparently without the special solicitation Skyworks Solutions would have had a failed vote.

On the other hand one company that did not bump a rule 14a-8 proposal, just like the proposal submitted to Skyworks Solutions, saw its shareholders give 51% approval at its 2018 annual meeting.

This is the first in a series of responses.

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

Sincerely,

John Chevedden

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>

[This line and any line above it is not for publication.]

Proposal [4] – Special Shareholder Meetings

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

Special shareholder meetings allow shareholders to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison. This proposal topic, sponsored by William Steiner, also won 78% support at a Sprint annual meeting with 1.7 Billion yes-votes.

Nuance Communications, Inc. (NUAN) shareholders gave 94%-support on February 28, 2018 to a rule 14a-8 proposal calling for 10% of shareholders to call a special meeting.

It is important that our company goes the extra mile and adopts an ownership threshold of 10%. Some companies have adopted an ownership threshold of 25% – which can mean that more than 50% of shareholders must be contacted during a short window of time to simply call a special meeting. Plus many shareholders, who are convinced that a special meeting should be called, can make a small technical error that will disqualify them from meeting the requirements to be part of the group calling for a special meeting. Plus we have no right to act by written consent.

Please vote to to give management more of an incentive to listen to shareholders:

Special Shareholder Meetings – Proposal [4]

[The line above is for publication.]

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301

TEL: (650) 470-4500
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DIRECT FAX
650-798-6520
EMAIL ADDRESS
JOSH.LAGRANGE@SKADDEN.COM

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BRUSSELS
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HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SEOUL
SHANGHAI
SINGAPORE
TOKYO
TORONTO

May 11, 2018

BY E-MAIL (shareholderproposals@sec.gov)

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

RE: NetApp, Inc. – 2018 Annual Meeting –
Exclusion of Shareholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are writing on behalf of our client, NetApp, Inc., a Delaware corporation (the "Company"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, the Company may exclude from the proxy materials (the "Proxy Materials") to be distributed by the Company in connection with its 2018 annual meeting of shareholders[1] (the "2018 Annual Meeting") the shareholder proposal and supporting statement (the "Shareholder Proposal") submitted to the Company by John Chevedden (the "Proponent") on March 12, 2018.

[1] Although the Company's organizational documents and its proxy materials generally use the term *stockholder*, rather than *shareholder*, to refer to a holder of the Company's capital stock, this letter uses the term "shareholder" throughout for consistency with the terminology used in the Shareholder Proposal and in Rule 14a-8 promulgated under the Exchange Act.

We are e-mailing this letter to the Staff in accordance with question and answer C of Staff Legal Bulletin No. 14D (CF) (Nov. 7, 2008) ("SLB 14D") and are providing with this letter, in accordance with question and answer G.7 of Staff Legal Bulletin No. 14 (CF) (July 13, 2001), question and answer F.3 of Staff Legal Bulletin No. 14B (CF) (July 13, 2001) and question and answer G of Staff Legal Bulletin No. 14C (CF) (June 28, 2005), copies of (i) the Shareholder Proposal as submitted to the Company by the Proponent on March 12, 2018, together with the accompanying cover letters with a mailing address, facsimile number and e-mail address of the Proponent and e-mail correspondence relating to confirmation of the Company's receipt thereof, enclosed as Exhibit A hereto, and (ii) the other correspondence between the Company and the Proponent relating to the Shareholder Proposal, enclosed as Exhibit B hereto, comprising (A) the Company's March 19, 2018 notice to the Proponent of a deficiency in the proof of the Proponent's ownership of the requisite shares of the Company's common stock as of the date the Shareholder Proposal was submitted to the Company (the "Deficiency Notice") and (B) a letter from Fidelity Investments (the "Broker Letter"), forwarded by e-mail to the Company by the Proponent on March 28, 2018, confirming the Proponent's ownership of the requisite shares of the Company's common stock. A copy of this submission is being sent simultaneously to the Proponent by e-mail and overnight courier service addressed to the Proponent as notice of the Company's intent to exclude the Shareholder Proposal from the 2018 Proxy Materials.

Rule 14a-8(k) and Section E of SLB 14D require in connection with a company's no-action request under Rule 14a-8 that a shareholder proponent send the company a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff in connection with the no-action request. Accordingly, we take this opportunity, on behalf of the Company, to remind the Proponent that, if the Proponent submits correspondence to the Commission or the Staff with respect to the Shareholder Proposal, a copy of that correspondence should concurrently be furnished to the undersigned.

The Shareholder Proposal

The Shareholder Proposal, which is set forth in full in Exhibit A hereto, requests that the Company's board of directors (the "Board") "take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting …."

Basis for Exclusion

We hereby respectfully request that the Staff concur in the Company's view that it may exclude the Shareholder Proposal from the Proxy Materials pursuant to Rule 14a-8(i)(9), because the Shareholder Proposal directly conflicts with a proposal that the Company intends to submit to its shareholders at the 2018 Annual Meeting.

Background

The Shareholder Proposal and Subsequent Correspondence

On March 12, 2018, the Company received the original Shareholder Proposal, accompanied by a cover letter from the Proponent, as set forth in Exhibit A hereto. On March 19, 2018 the Company sent the Deficiency Notice to the Proponent by e-mail and UPS Delivery. On March 28, 2018, the Company received the Broker Letter.

The Company's Existing Special Meeting Provisions

The Company's certificate of incorporation provides that special meetings of shareholders may only be called by the Company's chief executive officer, president, chairman of the Company's board of directors (the "Board") or a majority of the members of the Board; however, acting pursuant to its authority under the Company's bylaws, the Board has adopted and made effective a bylaw requiring the Company's chief executive officer or the chairman of the Board to call a special meeting of Company stockholders upon the request of qualifying shareholders owning not less than 25% of the outstanding shares of common stock of the Company, subject to applicable procedural requirements and limitations.

The Company Proposal

The Company plans to submit to its shareholders at the 2018 Annual Meeting, and include in its Proxy Materials, a proposal that shareholders ratify the retention of the Applicable Provisions (as defined below), including the 25% Ownership Threshold (as defined below) (the "Company Proposal"). The "Applicable Provisions" are the provisions contained in Article VIII of the Company's Certificate of Incorporation, as amended (the "Charter") and Sections 5 and 14 of Article II of the Company's Bylaws, as amended and restated (the "Bylaws").

A copy of the Charter is attached hereto as Exhibit C, and a copy of the Bylaws is attached hereto as Exhibit D.

The Shareholder Proposal May be Excluded Under Rule 14a-8(i)(9) Because the Shareholder Proposal Directly Conflicts with the Company Proposal

The Company believes that it may properly exclude the Shareholder Proposal from its Proxy Materials under Rule 14a-8(i)(9), which permits the exclusion of a proposal "[i]f the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." *See also* Staff Legal Bulletin No. 14H (Oct. 12, 2015) ("SLB 14H").[2]

Under the Applicable Provisions, subject to applicable procedural requirements and limitations in the Bylaws, qualifying shareholders owning at least 25% of the shares of the common stock of the Company as of the date of delivery of their request to the Company have the ability to require the Company's chief executive officer or the Chairman of the Board to call a special meeting of shareholders (the "25% Ownership Threshold"), but shareholders may not otherwise call a special meeting. *See* Article VIII of the Charter and Sections 5 and 14 of Article II of the Bylaws.

The Proponent is requesting that the Applicable Provisions be amended to instead permit holders in the aggregate of 10% of the Company's common stock to call a special meeting of shareholders, which is in direct conflict with the Company Proposal seeking ratification of the retention of the Applicable Provisions, including the 25% Ownership Threshold. Therefore, the Shareholder Proposal directly conflicts with the Company Proposal such that the Company's shareholders could not logically vote for both the Shareholder Proposal and the Company Proposal (*i.e.*, a vote for one proposal would be tantamount to a vote against the other proposal). *See* SLB 14H.

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[2] SLB 14H states that consideration of when a shareholder proposal may be excluded under Rule 14a-8(i)(9) should be based on whether there is a direct conflict between the management and stockholder proposals at issue:

> After reviewing the history of Rule 14a-8(i)(9) and based on our understanding of the rule's intended purpose, we believe that any assessment of whether a proposal is excludable under this basis should focus on whether there is a direct conflict between the management and shareholder proposals. For this purpose, we believe that a direct conflict would exist if a reasonable shareholder could not logically vote in favor of both proposals, i.e., a vote for one proposal is tantamount to a vote against the other proposal. While this articulation may be a higher burden for some companies seeking to exclude a proposal to meet than had been the case under our previous formulation, we believe it is most consistent with the history of the rule and more appropriately focuses on whether a reasonable shareholder could vote favorably on both proposals or whether they are, in essence, mutually exclusive proposals.

The Staff has recently issued no-action relief under Rule 14a-8(i)(9) to, among others, The AES Corporation ("AES"),[3] CF Industries Holdings, Inc. ("CF Industries"),[4] and Capital One Financial Corporation ("Capital One")[5] based on facts and circumstances similar to those to which this request relates. The no-action requests submitted by each of AES, CF Industries, and Capital One addressed a shareholder-sponsored shareholder resolution, to be submitted to shareholders at the applicable company's 2018 annual meeting, requesting that the applicable company's board of directors take the steps necessary (unilaterally if possible) to amend the applicable company's bylaws and each appropriate governing document to give holders in the aggregate of 10% of the applicable company's outstanding common stock the power to call a special shareowner meeting. Each such company's no-action request represented that its board of directors intended to submit a proposal to shareholders at such company's 2018 annual meeting to seek shareholder ratification of the 25% aggregate ownership threshold to call a special meeting of shareholders contained in the applicable governing documents.

The situation faced by the Company in connection with the Shareholder Proposal is substantially similar to that presented in each of *The AES Corporation, CF Industries Holdings, Inc.*, and *Capital One Financial Corporation*, in that all involve competing proposals for implementation of mutually exclusive approaches. Presenting both proposals in the Proxy Materials would result in directly competing proposals for implementation of shareholder special meeting provisions that conflict on the basis of the share ownership threshold for shareholders to be able to call for a special meeting of shareholders. Here, as in the three above-cited no-action letters, a shareholder cannot logically vote for the Company Proposal to ratify the retention of the Applicable Provisions, including the 25% Ownership Threshold, and also vote for the Shareholder Proposal to amend the Applicable Provisions to establish a 10% share ownership threshold.

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3 *The AES Corporation* (Dec. 19, 2017).

4 *CF Industries Holdings, Inc.* (Jan. 30, 2018).

5 *Capital One Financial Corporation* (Feb. 21, 2018).

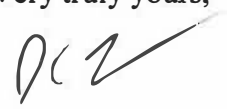
The position taken in each of *The AES Corporation*, *CF Industries Holdings, Inc.*, and *Capital One Financial Corporation* is consistent with the position taken by the Staff in an analogous situation in which a company sought to exclude in reliance on Rule 14a-8(i)(9) a shareholder proposal to request modification of an existing governance provision in a manner that would conflict with a management proposal to ratify the retention of such existing governance provision. *Illumina, Inc.* (Mar. 18, 2016). In *Illumina, Inc.*, the shareholder proposal sought to eliminate and replace supermajority provisions in the company's charter and bylaws with a simple majority voting standard, which conflicted with the company's plans to seek ratification of existing bylaw and charter provisions related to the company's existing supermajority voting requirements at the same annual meeting. In that instance, the Staff agreed with the company that it could rely on Rule 14a-8(i)(9) to exclude the shareholder proposal. *See also Herley Industries, Inc.* (Nov. 20, 2007) (granting relief under Rule 14a-8(i)(9) to exclude a shareholder proposal requesting an amendment to the company's bylaws to provide for majority voting in the election of directors that conflicted with the company's proposal to maintain a plurality vote standard).

Because the Company Proposal will directly conflict with the Shareholder Proposal, as detailed above, submitting both proposals to shareholders at the 2018 Annual Meeting would present alternative and conflicting decisions for shareholders, creating the potential for inconsistent and ambiguous results. Accordingly, the Company requests that the Staff, consistent with *The AES Corporation* and the other no-action letters cited above, concur that the Company may exclude the Shareholder Proposal under Rule 14a-8(i)(9). The Company is aware of the conditions imposed by the Staff in granting the no-action request made in *Capital One Financial Corporation.*

Conclusion

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (650) 470-4575.

Very truly yours,



Josh LaGrange

Enclosures

cc: Elizabeth O'Callahan
Vice President, Legal Department
NetApp, Inc.
1395 Crossman Avenue
Sunnyvale, CA 94089

John Chevedden
***

***

EXHIBIT A

(see attached)

JOHN CHEVEDDEN
***

Mr. Matthew Fawcett
Corporate Secretary
NetApp, Inc. (NTAP)
495 E. Java Dr
Sunnyvale CA 94089
Phone: 408 822-6000
FX: 408-822-4501
FX: 408-716-2494

Dear Mr. Fawcett,

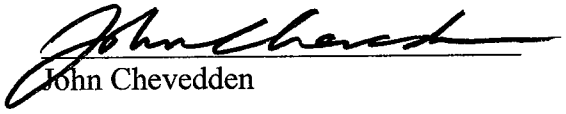
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

March 12, 2018
Date

cc: Elizabeth O'Callahan <Beth.O'Callahan@netapp.com>
Amy Meese <Amy.Meese@netapp.com>
Deanna M. Butler <Deanna.Butler@netapp.com>
Senior Director, Legal

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

[This line and any line above it is not for publication.]

Proposal [4] – Special Shareholder Meetings

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

Special shareholder meetings allow shareholders to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison. This proposal topic, sponsored by William Steiner, also won 78% support at a Sprint annual meeting with 1.7 Billion yes-votes.

Nuance Communications, Inc. (NUAN) shareholders gave 94%-support on February 28, 2018 to a rule 14a-8 proposal calling for 10% of shareholders to call a special meeting.

It is important that our company goes the extra mile and adopts an ownership threshold of 10%. Some companies have adopted an ownership threshold of 25% – which can mean that more than 50% of shareholders must be contacted during a short window of time to simply call a special meeting. Plus many shareholders, who are convinced that a special meeting should be called, can make a small technical error that will disqualify them from meeting the requirements to be part of the group calling for a special meeting. Plus we have no right to act by written consent.

Please vote to to give management more of an incentive to listen to shareholders:

Special Shareholder Meetings – Proposal [4]

[The line above is for publication.]

John Chevedden, *** sponsors this proposal.

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

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

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

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

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

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

EXHIBIT B

(see attached)

NetApp

www.netapp.com

408-822-4816 Tel
408-822-3979 Fax

1395 Crossman Avenue
Sunnyvale, CA 94089

March 19, 2018

VIA U.S. MAIL and ELECTRONIC MAIL
Mr. John Chevedden
***

Dear Mr. Chevedden:

We are in receipt of your letter dated March 11, 2018 and your shareholder proposal dated March 12, 2018. The materials you submitted to NetApp, Inc. ("NetApp") did not include evidence of the securities ownership referenced in your letter. Under the proxy rules of the Securities and Exchange Commission (the "SEC"), in order to be eligible to submit a proposal for NetApp's 2018 annual meeting of shareholders (the "Annual Meeting"), a proponent must have continuously held at least $2,000 in market value of NetApp's common stock for at least one year, preceding and including the date that the proposal was submitted. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

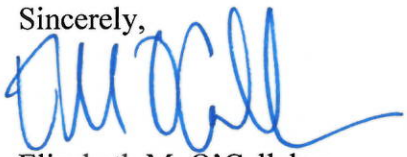
Our records indicate that you are not a registered holder of NetApp common stock. Please provide a written statement from the record holder of the your shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time the proposal was submitted, which was March 12, 2018, you had beneficially held the requisite number of shares of NetApp common stock continuously for at least one year preceding and including that date. You should be able to find out who this DTC participant is by asking your broker or bank. If the DTC participant knows your broker or bank's holdings, but does not know your holdings, you may be able to satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of shares were continuously held for at least one year—one from your broker or bank confirming your ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving your ownership of the minimum number of shares of NetApp common stock, please see Rule 14a-8(b)(2).

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

NetApp

In accordance with the requirements of Rule 14a-8, please provide verification of your ownership of NetApp securities to us in a response postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the proposal is eligible for inclusion in the proxy materials for the Annual Meeting. NetApp reserves the right to seek relief from the SEC as appropriate.

Sincerely,



Elizabeth M. O'Callahan
Vice President, Legal
NetApp, Inc.

cc: Matthew K. Fawcett, SVP and General Counsel

NetApp

EXHIBIT A

§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?

NetApp™

(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).

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(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 anti-fraud 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.

From: LaBrec, Sandy
Sent: Wednesday, March 21, 2018 12:06 PM
To: OCallahan, Elizabeth
Subject: FW: UPS Delivery Notification,Reference Number 1: ***

FYI – Confirmation that letter was delivered.

From: UPS Quantum View <pkginfo@ups.com>
Sent: Wednesday, March 21, 2018 12:04 PM
To: LaBrec, Sandy <Sandy.LaBrec@netapp.com>
Subject: UPS Delivery Notification,Reference Number 1: ***

Your package has been delivered.

Delivery Date: Wednesday, 03/21/2018
Delivery Time: 11:56 AM

Set Delivery Instructions | Track Package Status | View Delivery Planner

At the request of Netapp, Sunnyvale this notice alerts you that the status of the shipment listed below has changed.

Shipment Detail

Tracking Number:	*** [redacted] ***
UPS Service:	UPS 2ND DAY AIR
Number of Packages:	1
Package Weight:	0.3 LBS
Delivery Location:	FRONT DOOR
Reference Number 1:	***
Reference Number 2:	NetApp Stock Ownership Ltr

Download the UPS mobile app

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

NTAP

Post-it® Fax Note 7671	Date 3-28-18	# of pages ▶
To Elizabeth O'Callahan	From John Chevedden	
Co./Dept.	Co.	
Phone #	Ph ***	
Fax # 408-822-3979	Fax	

March 27, 2018

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 January 1, 2017:

Security name	CUSIP	Trading symbol	Share quantity
Netapp Inc.	64110D104	NTAP	80

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

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

Sincerely,

Patrick Solomons
Personal Investing Operations

Our File: W984764-26MAR18

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

EXHIBIT C

(see attached)

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "NETAPP, INC." AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE FIRST DAY OF NOVEMBER, A.D. 2001, AT 9 O`CLOCK A.M.

CERTIFICATE OF AGREEMENT OF MERGER, FILED THE FIRST DAY OF NOVEMBER, A.D. 2001, AT 9:05 O`CLOCK A.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE TWENTY-FOURTH DAY OF MARCH, A.D. 2003, AT 3:30 O`CLOCK P.M.

CERTIFICATE OF OWNERSHIP, CHANGING ITS NAME FROM "NETWORK APPLIANCE, INC." TO "NETAPP, INC.", FILED THE TENTH DAY OF MARCH, A.D. 2008, AT 6:23 O`CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE SEVENTH DAY OF MAY, A.D. 2013, AT 9:04 O`CLOCK A.M.

3452743 8100H
SR# 20183310012

Authentication: 202629006
Date: 05-03-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

The First State

CERTIFICATE OF AMENDMENT, FILED THE THIRTEENTH DAY OF SEPTEMBER, A.D. 2013, AT 8:51 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "NETAPP, INC.".

Jeffrey W. Bullock, Secretary of State

3452743 8100H
SR# 20183310012

Authentication: 202629006
Date: 05-03-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 11/01/2001
010551758 - 3452743

CERTIFICATE OF INCORPORATION

OF

NETWORK APPLIANCE, INC.

ARTICLE I

The name of this corporation is Network Appliance, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The name of the Corporation's registered agent at such address is the Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "GCL"), as the same exists or may hereafter be amended.

ARTICLE IV

The name and mailing address of the incorporator is John W. Larson, Esq., Brobeck, Phleger & Harrison LLP, One Market, Spear Street Tower, San Francisco, CA 94105.

ARTICLE V

The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Corporation is authorized to issue is Eight Hundred Ninety Million (890,000,000). Eight Hundred Eighty-Five Million (885,000,000) shares shall be Common Stock, par value $0.001 per share, and Five Million (5,000,000) shares shall be Preferred Stock, par value $0.001 per share.

The Preferred Stock may be issued from time to time in one or more series, without further stockholder approval. The Board of Directors of the Corporation is hereby authorized to fix or alter the rights, preferences, privileges and restrictions granted to or imposed upon each series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or of any of them. The rights, privileges, preferences and restrictions of any such additional series may be subordinated to, pari passu with (including, without limitation, inclusion in provisions with respect to liquidation and acquisition preferences, redemption and/or approval of matters by vote), or senior to any of those of any present or future class or series of Preferred Stock or Common Stock. The Board of Directors is also authorized to increase or decrease the number of shares of any series prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any

series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation. In addition, the Bylaws may be amended by the affirmative vote of holders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of voting stock of the Corporation entitled to vote at an election of directors.

ARTICLE VII

The number of directors of the Corporation shall be determined by resolution of the Board of Directors.

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide. Advance notice of stockholder nominations for the election of directors and of any other business to be brought before any meeting of the stockholders shall be given in the manner provided in the Bylaws of this Corporation.

At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, or until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the GCL.

Vacancies occurring on the Board of Directors for any reason may be filled by vote of a majority of the remaining members of the Board of Directors, even if less than a quorum, at any meeting of the Board of Directors. A person so elected by the Board of Directors to fill a vacancy shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been duly elected and qualified.

ARTICLE VIII

Stockholders of the Corporation shall take action by meetings held pursuant to this Certificate of Incorporation and the Bylaws and shall have no right to take any action by written consent without a meeting. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. Special meetings of the stockholders, for any purpose or purposes, may only be called by the Chief Executive Officer, President, Chairman of the Board or a majority of the members of the Board of Directors. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE IX

To the fullest extent permitted by applicable law, this Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, employees and agents (and any other persons to which Delaware law permits this Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the GCL, subject only to limits created by applicable Delaware law (statutory or non-statutory), with respect to action for breach of duty to the Corporation, its stockholders, and others.

No director of the Corporation shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director, except for any matter in respect of which such director shall be liable under Section 174 of the GCL or any amendment thereto or shall be liable by reason that, in addition to any and all other requirements for such liability, such director (1) shall have breached the director's duty or loyalty to the Corporation or its stockholders, (2) shall have acted in manner involving intentional misconduct or a knowing violation of law or, in failing to act, shall have acted in a manner involving intentional misconduct or a knowing violation of law, or (3) shall have derived an improper personal benefit. If the GCL is hereafter amended to authorize the further elimination or limitation of the liability of a director, the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended.

Each person who was or is made a party or is threatened to be made a party to or is in any way involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), including any appeal therefrom, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or a direct or indirect subsidiary of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another entity or enterprise, or was a director or officer of a foreign or domestic corporation which was predecessor corporation of the Corporation or of another entity or enterprise at the request of such predecessor corporation, shall be indemnified and held harmless by the Corporation, and the Corporation shall advance all expenses incurred by any such person in defense of any such proceeding prior to its final determination, to the fullest extent authorized by the GCL. In any proceeding against the Corporation to enforce these rights, such person shall be presumed to be entitled to indemnification and the Corporation shall have the burden of proving that such person has not met the standards of conduct for permissible indemnification set forth in the GCL. The rights to indemnification and advancement of expenses conferred by this Article IX shall be presumed to have been relied upon by the directors and officers of the Corporation in serving or continuing to serve the Corporation and shall be enforceable as contract rights. Said rights shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled. The Corporation may, upon written demand presented by a director or officer of the Corporation or of a direct or indirect subsidiary of the Corporation, or by a person serving at the request of the Corporation as a director or officer of another entity or enterprise, enter into contracts to provide such persons with specified rights to indemnification, which contracts may confer rights and protections to the maximum extent permitted by the GCL, as amended and in effect from time to time.

If a claim under this Article IX is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce the right to be advanced expenses incurred in defending any proceeding prior to its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the GCL for the Corporation to indemnify the claimant for the amount claimed, but the claimant shall be presumed to be entitled to indemnification and the Corporation shall have the burden of proving that the claimant has not met the standards of conduct for permissible indemnification set forth in the GCL.

If the GCL is hereafter amended to permit the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment, the indemnification rights conferred by this Article IX shall be broadened to the fullest extent permitted by the GCL, as so amended. No amendment to or repeal of this Article IX shall affect or diminish in any way the rights of any indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of any such amendment or repeal.

ARTICLE X

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles VI, VII, VIII, IX and X of this Certificate of Incorporation may not be repealed or amended in any respect without the affirmative vote of holders at least 66-2/3% of the outstanding voting stock of the Corporation entitled to vote at an election of directors.

IN WITNESS WHEREOF, the undersigned incorporator has executed this certificate on November 1, 2001.

/S/ JOHN W. LARSON
John W. Larson
Incorporator

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:05 AM 11/01/2001
010551759 - 3452743

AGREEMENT AND PLAN OF MERGER OF NETWORK APPLIANCE, INC. (A DELAWARE CORPORATION) AND NETWORK APPLIANCE, INC. (A CALIFORNIA CORPORATION)

THIS AGREEMENT AND PLAN OF MERGER dated as of this 1st day of November, 2001 (the "Agreement"), is between Network Appliance, Inc., a Delaware corporation ("Network Appliance Delaware"), and Network Appliance, Inc., a California corporation ("Network Appliance California"). Network Appliance Delaware and Network Appliance California are collectively referred to herein as the "Constituent Corporations."

RECITALS

A. Network Appliance Delaware is a corporation duly organized and existing under the laws of the State of Delaware and has a total authorized capital stock of Eight Hundred Ninety Million (890,000,000) shares, $0.001 par value. The number of shares of Common Stock of Network Appliance Delaware authorized to be issued is Eight Hundred Eighty-Five Million (885,000,000), $0.001 par value. The number of shares of Preferred Stock of Network Appliance Delaware authorized to be issued is Five Million (5,000,000), $0.001 par value. The Preferred Stock of Network Appliance Delaware is undesignated as to series, rights, preferences, privileges or restrictions. As of the date hereof, One Thousand (1,000) shares of Common Stock were issued and outstanding, all of which were held by Network Appliance California, and no shares of Preferred Stock were issued and outstanding.

B. Network Appliance California is a corporation duly organized and existing under the laws of the State of California and has a total authorized capital stock of Eight Hundred Ninety Million (890,000,000) shares. The number of shares of Common Stock of Network Appliance California authorized to be issued is Eight Hundred Eighty-Five Million (885,000,000), no par value. The number of shares of Preferred Stock of Network Appliance California authorized to be issued is Five Million (5,000,000), no par value.

C. The Boards of Directors of the Constituent Corporations deem it advisable and in the best interests of the Constituent Corporations that Network Appliance California merge with and into Network Appliance Delaware upon the terms and conditions herein provided.

D. The respective Boards of Directors and Shareholders of Network Appliance Delaware and Network Appliance California have approved this Agreement and have directed that this Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, Network Appliance Delaware and Network Appliance California hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

I. MERGER

1.1 Merger. In accordance with the provisions of this Agreement, the General Corporation Law of the State of Delaware and the General Corporation Law of the State of California, Network Appliance California shall be merged with and into Network Appliance Delaware (the "Merger"), the separate existence of Network Appliance California shall cease and Network Appliance Delaware shall survive the Merger and shall continue to be governed by the laws of the State of Delaware, and Network Appliance Delaware shall be, and is herein sometimes referred to as, the "Surviving Corporation," and the name of the Surviving Corporation shall be Network Appliance, Inc.

1.2 Filing and Effectiveness. The Merger shall become effective when an executed counterpart of this Agreement meeting the requirements of the Delaware General Corporation Law shall have been filed with the Secretary of State of the State of Delaware.

The date and time when the Merger shall become effective, as aforesaid, is herein called the "Effective Date."

1.3 Effect of the Merger. Upon the Effective Date, the separate existence of Network Appliance California shall cease and Network Appliance Delaware, as the Surviving Corporation, (i) shall continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date, (ii) shall be subject to all actions previously taken by its and Network Appliance California's Board of Directors, (iii) shall succeed, without other transfer, to all of the assets, rights, powers and property of Network Appliance California in the manner more fully set forth in Section 259 of the General Corporation Law of the State of Delaware, (iv) shall continue to be subject to all of the debts, liabilities and obligations of Network Appliance Delaware as constituted immediately prior to the Effective Date, and (v) shall succeed, without other transfer, to all of the debts, liabilities and obligations of Network Appliance California in the same manner as if Network Appliance Delaware had itself incurred them, all as more fully provided under the applicable provisions of the General Corporation Law of the State of Delaware and the General Corporation Law of the State of California.

II. CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

2.1 Certificate of Incorporation. The Certificate of Incorporation of Network Appliance Delaware as in effect immediately prior to the Effective Date of the Merger (the "Certificate of Incorporation") shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.2 Bylaws. The Bylaws of Network Appliance Delaware as in effect immediately prior to the Effective Date shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2.3 Directors and Officers. The directors and officers of Network Appliance Delaware immediately prior to the Effective Date shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

III. MANNER OF CONVERSION OF STOCK

3.1 Network Appliance California Common Shares. Upon the Effective Date, every one (1) share of Network Appliance California Common Stock, no par value, issued and outstanding immediately prior thereto shall by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable shares of Common Stock, par value $0.001 per share, of the Surviving Corporation.

3.2 Network Appliance California Stock Option Plans

(a) Upon the Effective Date, the Surviving Corporation shall assume and continue the stock option plans and all other employee benefit plans of Network Appliance California. Each outstanding and unexercised option or other right to purchase Network Appliance California Common Stock shall become an option or right to purchase the Surviving Corporation's Common Stock on the basis of one share of the Surviving Corporation's Common Stock for each share of Network Appliance California Common Stock issuable pursuant to any such option, or stock purchase right, on the same terms and conditions and at an exercise price per share equal to the exercise price applicable to any such Network Appliance California option or stock purchase right at the Effective Date. There are no options, purchase rights for or securities convertible into Preferred Stock of Network Appliance California.

(b) A number of shares of the Surviving Corporation's Common Stock shall be reserved for issuance upon the exercise of options or stock purchase rights equal to the number of shares of Network Appliance California Common Stock so reserved immediately prior to the Effective Date of the Merger.

3.3 Network Appliance Delaware Common Stock. Upon the Effective Date of the Merger, each share of Common Stock, par value $0.001 per share, of Network Appliance Delaware issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by Network Appliance Delaware, or the holder of such shares or any other person, be cancelled and returned to the status of authorized and unissued shares of Common Stock.

3.4 Exchange of Certificates. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Network Appliance California Common Stock may, at such stockholder's option, but need not, surrender the same for cancellation to Computershare as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided. Unless and until so surrendered, each outstanding

certificate theretofore representing shares of Network Appliance California Common Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock into which such shares of Network Appliance California Common Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of the Surviving Corporation represented by such outstanding certificate as provided above.

Each certificate representing Common Stock of the Surviving Corporation so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificates of Network Appliance California so converted and given in exchange therefore, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws, or other such additional legends as agreed upon by the holder and the Surviving Corporation.

If any certificate for shares of Network Appliance Delaware stock is to be issued in a name other than that in which the certificate surrendered in exchange therefor is registered, it shall be a condition of issuance thereof that the certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer, that such transfer otherwise be proper and comply with applicable securities laws and that the person requesting such transfer pay to Network Appliance Delaware or the Exchange Agent any transfer or other taxes payable by reason of issuance of such new certificate in a name other than that of the registered holder of the certificate surrendered or establish to the satisfaction of Network Appliance Delaware that such tax has been paid or is not payable.

IV. CONDITIONS TO THE MERGER

The obligations of the Constituent Corporations under this Agreement are subject to the fulfillment, or the waiver by the parties, on or before the Effective Date, of each of the following:

4.1 The shareholders of Network Appliance California shall have approved the Merger.

4.2 The sole stockholder of Network Appliance Delaware shall have approved the Merger.

4.3 All consents required to be obtained by the Constituent Corporations to effect the Merger shall have been obtained.

V. GENERAL

5.1 Further Assurances. From time to time, as and when required by Network Appliance Delaware or by its successors or assigns, there shall be executed and delivered on behalf of Network Appliance California such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other actions as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by Network Appliance Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Network Appliance California and otherwise to carry out the purposes of this Agreement, and the officers and directors of Network Appliance Delaware are fully authorized in the name and on behalf of Network Appliance California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

5.2 Abandonment. At any time before the Effective Date, this Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either Network Appliance California or of Network Appliance Delaware, or of both, notwithstanding the approval of this Agreement by the shareholders of Network Appliance California or the sole stockholder of Network Appliance Delaware. In the event of the termination of this Agreement, the Agreement shall become void and of no effect and there shall be no obligations on either Constituent Corporation or their respective Board of Directors or shareholders with respect thereto.

5.3 Amendment. The Boards of Directors of the Constituent Corporations may amend this Agreement at any time prior to the filing of this Agreement (or certificate in lieu thereof) with the Secretary of State of the State of Delaware, provided that an amendment made subsequent to the adoption of this Agreement by the stockholders of Network Appliance California shall not: (1) alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of Network Appliance California, (2) alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger, or (3) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of Network Appliance California.

5.4 Registered Office. The registered office of the Surviving Corporation in the State of Delaware is 2711 Centerville Road, City of Wilmington, County of New Castle, Delaware 19808 and the Corporation Service Company is the registered agent of the Surviving Corporation at such address.

5.5 Agreement. Executed copies of this Agreement will be on file at the principal place of business of the Surviving Corporation at 495 East Java Drive, Sunnyvale, California 94089, and copies thereof will be furnished to any stockholder of either Constituent Corporation, upon request and without cost.

5.6 Governing Law. This Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware

and, so far as applicable, the merger provisions of the General Corporation Law of the State of California.

5.7 Counterparts. In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement having first been approved by the resolutions of the Board of Directors of Network Appliance, Inc., a Delaware corporation, and the Board of Directors of Network Appliance, Inc., a California corporation, is hereby executed on behalf of each of such two corporations and attested by their respective officers thereunto duly authorized.

NETWORK APPLIANCE, INC.
a Delaware corporation

By:/S/ DANIEL J. WARMENHOVEN
Daniel J. Warmenhoven
Chief Executive Officer

Attest:

/S/ JEFFRY R. ALLEN
Jeffry R. Allen
Executive Vice President Financial Operations,
Chief Financial Officer

NETWORK APPLIANCE, INC.
a California corporation

By:/S/ DANIEL J. WARMENHOVEN
Daniel J. Warmenhoven
Chief Executive Officer

Attest:

/S/ JEFFRY R. ALLEN
Jeffry R. Allen
Executive Vice President Financial Operations,
Chief Financial Officer

NETWORK APPLIANCE, INC.
(a Delaware Corporation)

OFFICER'S CERTIFICATE

Daniel J. Warmenhoven and Jeffry R. Allen certify that:

1. They are the Chief Executive Officer and Executive Vice President Finance and Operations and Chief Financial Officer, respectively, of Network Appliance, Inc., a corporation duly organized and existing under the laws of the state of Delaware.

2. There were 1,000 of Common Stock outstanding and entitled to vote on the Agreement and Plan of Merger (the "Merger Agreement") attached hereto. There are no shares of Preferred Stock outstanding.

3. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of 100% of the shares outstanding an entitled to vote on the Merger Agreement.

4. The percentage vote required was more than 50% of the votes entitled to be cast by holders of outstanding shares of Common Stock.

5. Daniel J. Warmenhoven and Jeffry R. Allen further declare under penalty of perjury under the laws of the State of Delaware that they have read the foregoing certificate and know the contents thereof and that the same is true of their own knowledge.

Executed in Santa Clara, California on November 1, 2001.

/S/ DANIEL J. WARMENHOVEN
Daniel J. Warmenhoven
Chief Executive Officer

/S/ JEFFRY R. ALLEN
Jeffry R. Allen
Executive Vice President Finance and Operations,
Chief Financial Officer

NETWORK APPLIANCE, INC.
(a California Corporation)

OFFICER'S CERTIFICATE

Daniel J. Warmenhoven and Jeffry R. Allen certify that:

1. They are the Chief Executive Officer and Executive Vice President Finance and Operations and Chief Financial Officer, respectively, of Network Appliance, Inc., a corporation duly organized and existing under the laws of the state of California.

2. There were 330,366,171 shares of Common Stock and no shares of Preferred Stock outstanding as of the record date ("the Record Date") and entitled to vote at the shareholders' meeting at which the Agreement and Plan of Merger (the "Merger Agreement") attached hereto was approved.

3. The principal terms of the Merger Agreement were approved by the Board of Directors and by the vote of shares of each class of stock which equaled or exceeded the vote required.

4. The percentage vote required was more than 50% of the votes entitled to be cast by holders of Common Stock outstanding as of the Record Date, voting as a single class.

5. Daniel J. Warmenhoven and Jeffry R. Allen further declare under penalty of perjury under the laws of the State of California that they have read the foregoing certificate and know the contents thereof and that the same is true of their own knowledge.

Executed in Santa Clara, California on November 1, 2001.

/S/ DANIEL J. WARMENHOVEN
Daniel J. Warmenhoven
Chief Executive Officer

/S/ JEFFRY R. ALLEN
Jeffry R. Allen
Executive Vice President Finance and Operations,
Chief Financial Officer

CERTIFICATE OF CHANGE OF REGISTERED AGENT AND REGISTERED OFFICE FOR NETWORK APPLIANCE, INC.

Network Appliance, Inc. a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware

DOES HEREBY CERTIFY:

That the registered office of the corporation in the state of Delaware is hereby changed to Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle.

That the registered agent of the corporation is hereby changed to THE CORPORATION TRUST COMPANY, the business address of which is identical to the aforementioned registered office as changed.

That the changes in the registered office and registered agent of the corporation as set forth herein were duly authorized by resolution of the Board of Directors of the corporation.

IN WITNESS WHEREOF, the corporation has caused this Certificate to be signed by an authorized officer, this 5th day of March, 2003.

Andrew Kryder, Secretary

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 03:30 PM 03/24/2003
030195962 - 3452743

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:23 PM 03/10/2008
FILED 06:23 PM 03/10/2008
SRV 080301327 - 3452743 FILE

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

NETAPP NC CORPORATION,
a Delaware corporation

WITH AND INTO

NETWORK APPLIANCE, INC.,
a Delaware corporation

(Pursuant to Section 253 of the General Corporation Law of Delaware)

Network Appliance, Inc. (the "**Corporation**"), a corporation incorporated on the 1st day of November, 2001, pursuant to the provisions of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. That the Corporation is organized and existing under the General Corporation Law of the State of Delaware.

2. That the Corporation owns 100% of the capital stock of NetApp NC Corporation, a Delaware corporation ("**Sub**") incorporated on the 6th day of March, 2008, pursuant to the provisions of the General Corporation Law of the State of Delaware.

3. That the Corporation determined to merge Sub into itself (the "**Merger**") by the resolutions of its board of directors attached hereto as **Exhibit A**, duly adopted on March 3, 2008.

4. Pursuant to Section 253(b) of the General Corporation Law of Delaware the name of the corporation surviving the merger shall be NetApp, Inc.

5. The Merger shall become effective upon filing with the Delaware Secretary of State.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its duly authorized officer on this 10 day of March, 2008.

NETWORK APPLIANCE, INC.

By: /s/ Andrew Kryder

Name: Andrew Kryder

Title: Secretary

EXHIBIT A

Resolutions of the Board of Directors of Network Appliance, Inc., a Delaware Corporation

Merger with NetApp NC Corporation.

WHEREAS: The Company owns 100% of the outstanding capital stock of NetApp NC Corporation, a corporation organized and existing under the laws of the State of Delaware ("Merger Sub").

WHEREAS: The Board desires that Merger Sub merge with and into the Company and that the Company possess itself of all the estate, property, rights, privileges and franchises of Merger Sub.

NOW, THEREFORE, BE IT RESOLVED: That the Board hereby authorizes the merger of Merger Sub with and into the Company, with the Company continuing as the surviving corporation (the "Merger").

RESOLVED FURTHER: That upon the effective date of the Merger, the name of the Company shall be changed from "Network Appliance, Inc." to "NetApp, Inc." pursuant to Section 253(b) of the Delaware General Corporation Law.

RESOLVED FURTHER: That upon the effective date of the Merger, the Company shall assume any and all assets, obligations and liabilities of Merger Sub pursuant to Section 253 of the Delaware General Corporation Law.

RESOLVED FURTHER: That each outstanding share of capital stock of Merger Sub will be canceled and extinguished upon the effectiveness of the Merger, and no consideration shall be issued in exchange therefor.

RESOLVED FURTHER: That the officers of the Company be and hereby are directed to make and execute a Certificate of Ownership and Merger setting forth a copy of the resolution to merge Merger Sub with and into the Company and assume Merger Sub's liabilities and obligations, and the date of adoption thereof, and to file the same in the office of the Secretary of State of the State of Delaware.

RESOLVED FURTHER: That the Merger of Merger Sub with and into the Company shall become effective upon the filing of the Certificate of Ownership and Merger with the Secretary of State of the State of Delaware as provided for therein.

RESOLVED FURTHER: That the Certificate of Ownership and Merger in the form attached hereto as **Exhibit A** be and hereby is approved and adopted in all respects.

RESOLVED FURTHER: That upon the effective time of the Merger, the Amended and Restated Certificate of Incorporation of the Company ("Certificate of Incorporation")

in effect immediately prior to the effectiveness of the Merger shall continue to be the Certificate of Incorporation of the Company; *provided, however,* that the amendment to Article 1 of said Certificate of Incorporation as is effected by the merger is as follows: "The name of this corporation is NetApp, Inc.".

RESOLVED FURTHER: That upon the effective time of the Merger, the directors and officers of the Company, as constituted immediately prior to the effectiveness of the Merger, shall continue to be the directors and officers of the Company.

RESOLVED FURTHER: That each stock certificate evidencing the ownership of each share of Common Stock of the Company issued and outstanding immediately prior to the effective time of the merger shall continue to evidence ownership of the shares of the Company.

RESOLVED FURTHER: That each stock certificate evidencing the ownership of Common Stock of Company issued anytime after the effective time of the merger shall be in the form of the stock certificate to be approved by the appropriate officers of the Company.

RESOLVED FURTHER: That the Board hereby authorizes, directs and empowers the appropriate officers of the Company, and each of them, for and on behalf of the Company, to take any and all such actions, and prepare, execute and deliver any and all such documents, including filing of the Certificate of Ownership and Merger, as may be necessary or advisable to carry out the foregoing resolutions, and hereby ratifies and confirms any and all actions taken heretofore to accomplish such purposes.

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:09 AM 05/07/2013
FILED 09:04 AM 05/07/2013
SRV 130534012 - 3452743 FILE

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE

AND OF REGISTERED AGENT

OF

NETAPP, INC.

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is:

NETAPP, INC.

2. The registered office of the corporation within the State of Delaware is hereby changed to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.

3. The registered agent of the corporation within the State of Delaware is hereby changed to Corporation Service Company, the business office of which is identical with the registered office of the corporation as hereby changed.

4. The corporation has authorized the changes hereinbefore set forth by resolution of its Board of Directors.

/s/ Dona Priebe

Name: Dona Priebe
Title: Vice President

State of Delaware
Secretary of State
Division of Corporations
Delivered 09:15 PM 09/13/2013
FILED 08:51 PM 09/13/2013
SRV 131089653 - 3452743 FILE

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
NETAPP, INC.

NetApp, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is NetApp, Inc. The Corporation was originally incorporated under the name "Network Appliance, Inc." The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 1, 2001.

2. Article VI of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

> "In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation. In addition, the Bylaws may be amended by the affirmative vote of holders of at least a majority of the outstanding shares of voting stock of the Corporation entitled to vote at an election of directors."

3. Article X of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

> "The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in Articles VI, VII, VIII, IX and X of this Certificate of Incorporation may not be repealed or amended in any respect without the affirmative vote of holders of at least a majority of the outstanding voting stock of the Corporation entitled to vote at an election of directors."

4. The foregoing amendments were duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, NetApp, Inc. has caused this Certificate of Amendment of Certificate of Incorporation to be signed by Matthew K. Fawcett, a duly authorized officer of the Corporation, on September 13, 2013.

NetApp, Inc.

By: /s/ Matthew K. Fawcett
Matthew K. Fawcett
Senior Vice President, General Counsel and
Corporate Secretary

EXHIBIT D

(see attached)

EX-3.1 2 d557272dex31.htm EX-3.1

Exhibit 3.1

BYLAWS
OF
NETAPP, INC.

(amended and restated as of April 27, 2018)

ARTICLE I

OFFICES

Section 1.1. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 1.2. 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 2.1. All meetings of the stockholders for the election of directors shall be held at such place as may be fixed from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2.2. Annual meetings of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At each annual meeting, the stockholders shall elect directors to succeed those directors whose terms expire in that year and shall transact such other business as may properly be brought before the meeting.

Section 2.3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

Section 2.4. The officer who has charge of the stock ledger of the corporation shall prepare and make available, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder 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, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. 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 2.5. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may only be called by the Board of Directors or in accordance with Section 2.14 of these Bylaws.

Section 2.6. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 2.7. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.8. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, either the Chairman of the Board of Directors, the presiding officer of the meeting or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have 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. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted that might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.9. When a quorum is present at any duly-called meeting, the vote of the holders of a majority of the stock having voting power 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 statutes or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 2.10. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three (3) years from its date, unless the proxy provides for a longer period.

Section 2.11. (a) Nominations of persons for election to the Board of Directors shall be made at a meeting of the stockholders only (i) by the Board of Directors or by a committee appointed by the Board of Directors for such purpose, (ii) provided that the corporation's notice of meeting provides that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time of the giving of the notice provided for in this Bylaw, who shall be entitled to vote for the election of directors at such meeting and who complies with the procedures set forth in this Bylaw, or (iii) in the case of an annual meeting, by an Eligible Stockholder (as defined in Section 3.15 of these Bylaws) who complies with the procedures set forth in Section 3.15 of these Bylaws.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder pursuant to clause (a) (ii) above of this Section 11, such stockholder shall have given timely notice thereof (a "Nomination Notice") in proper written form to the secretary of the corporation. To be timely in the case of an annual meeting, a Nomination Notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting of stockholders is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting of stockholders was mailed or public disclosure of the date of the annual meeting of stockholders was made, whichever first occurs. To be timely in the case of a special meeting, a Nomination Notice shall be delivered to or mailed and received at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting of stockholders was mailed or public disclosure of the date of the annual meeting of stockholders was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper written form, a Nomination Notice shall set forth or be accompanied by the following as to each person, acting alone or in conjunction with one or more other persons as a partnership, limited partnership, syndicate or other group, who participates or is expected to participate in making such nomination or in organizing, directing or financing such nomination or solicitation of proxies to vote for the nominee:

(i) the name, age, residence, address, and business address of each proposed nominee and of each such person;

(ii) the principal occupation or employment, the name, type of business and address of the corporation or other organization in which such employment is carried on of each proposed nominee and of each such person;

(iii) the amount of stock of the corporation owned beneficially, either directly or indirectly, by each proposed nominee and each such person; and

(iv) a description of any arrangement or understanding of each proposed nominee and of each such person with each other or any other person regarding future employment or any future transaction to which the corporation will or may be a party.

(d) A Nomination Notice shall also set forth or be accompanied by the following as to each proposed nominee:

(i) the written consent of such proposed nominee to serve as a director if so elected;

(ii) a written statement of such proposed nominee that such proposed nominee, if elected, intends to tender, promptly following such proposed nominee's election or re-election, an irrevocable resignation effective upon such proposed nominee's failure to receive the required vote for re-election at the next meeting at which such proposed nominee would face re-election and upon acceptance of such resignation by the Board of Directors, in accordance with the corporation's Corporate Governance Guidelines; and

(iii) the written representation and agreement of such proposed nominee required by Section 3.16 of these Bylaws.

(e) Any proposed nominee or person providing any information to the corporation pursuant to this Section 11 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for the annual meeting, and such update and supplement shall be delivered to or mailed and received by the secretary at the principal executive offices of the corporation not later than five (5) business days after the record date.

(f) In addition to the information required or requested above in this Section 11 or any other provision of these Bylaws, the corporation may require any proposed nominee to furnish any other information that (i) may reasonably be requested by the corporation to determine whether the nominee would be independent under the rules and listing standards of the securities exchanges upon which the stock of the corporation is listed or traded, any applicable rules of the Securities and Exchange Commission or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors (collectively, the "Independence Standards"), (ii) could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee, or (iii) may reasonably be requested by the corporation to determine the eligibility of such nominee to serve as a director of the corporation.

(g) No person shall be eligible for election as a director of the corporation unless nominated in accordance with the provisions of the first paragraph of this Section 11 and any applicable procedures set forth in this Section 11 or Section 3.15 of these Bylaws. If the presiding officer of the meeting determines that a nomination was not made in accordance with such provisions and procedures, said presiding officer shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation. For the avoidance of doubt, if a nominee and/or the stockholder providing a Nomination Notice relating to such nominee breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 11, as determined by the Board of

Directors (or any duly authorized committee thereof) or the presiding officer of the meeting, then such nomination shall be deemed not to have been made in accordance with the procedures set forth in this Section 11 and such defective nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation.

Section 2.12. (a) At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the corporation's notice of meeting, (ii) by or at the direction of the Board of Directors, or (iii) in the case of an annual meeting, by any stockholder of the corporation who is a stockholder of record at the time of the giving of the notice provided for in this Bylaw, who shall be entitled to vote at such meeting and who complies with the procedures set forth in this Bylaw.

(b) In addition to any other applicable requirements, for business to be properly brought before any meeting by a stockholder pursuant to clause (a)(iii) above of this Section 12, the stockholder shall have given timely notice thereof in proper written form to the secretary of the corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting of stockholders is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting of stockholders was mailed or public disclosure of the date of the annual meeting of stockholders was made, whichever first occurs.

(c) To be in proper written form, a stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the meeting:

(i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting;

(ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made;

(iii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder of record and by the beneficial owner, if any, on whose behalf of the proposal is made; and

(iv) any material interest of such stockholder of record and the beneficial owner, if any, on whose behalf the proposal is made in such business.

(d) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 12. The presiding officer of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the procedures prescribed by this Section 12, and if such person should so determine, such person shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(e) In addition, notwithstanding the foregoing provisions of this Section 12, a stockholder shall comply with all applicable requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder with respect to the matters set forth in this Section 12.

Section 2.13. The stockholders of the corporation may not take action by written consent without a meeting but shall take any such actions at a duly called annual or special meeting in accordance with these Bylaws and the Certificate of Incorporation.

Section 2.14. (a) Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairman of the Board or the chief executive officer in accordance with Section 2.14(b).

(b)(i) A special meeting of stockholders shall be called by the Chairman of the Board or the chief executive officer upon written request in proper form (a "Special Meeting Request," and such meeting, a "Stockholder Requested Special Meeting") of one or more stockholder or stockholders that has or have Owned (as defined in Section 3.15(e)) continuously for at least one (1) year a number of shares of common stock of the corporation that represents not less than 25% of the outstanding shares of common stock of the corporation (the "Requisite Percentage") as of the date such request is delivered to the corporation (the "One-Year Period") who have complied in full with all other requirements of this Section 2.14(b) and otherwise set forth in these Bylaws. The Board of Directors shall determine in good faith whether all requirements set forth in this Section 2.14(b) have been satisfied and such determination shall be binding on the corporation and its stockholders.

(ii) A Special Meeting Request must be delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the secretary at the principal executive offices of the corporation, who shall promptly present the Special Meeting Request to the Chairman of the Board or the chief executive officer. A Special Meeting Request shall be valid only if it is signed and dated by each stockholder submitting the Special Meeting Request (each, a "Requesting Stockholder") or such stockholder's duly authorized agent, and includes both the information required by Section 2.14(b)(iii) below and: (A) (i) a statement by each Requesting Stockholder (x) setting forth and certifying as to the number of shares it Owns and has Owned continuously for the One-Year Period, (y) agreeing to continue to Own the Requisite Percentage through the date of annual meeting, and (z) indicating whether it intends to continue to Own the Requisite Percentage for at least one (1) year following the annual meeting; (ii) if the Requesting Stockholders are not the record holders of the Requisite Percentage, one or more written statements from the record holder(s) of the Requisite Percentage (and from each intermediary through which the Requisite Percentage is or has been held during the One-Year Period) verifying that, as of a date within seven (7) calendar days prior to the date the Special Meeting Request is delivered to or mailed and received at the principal executive offices of the corporation, the Requesting Stockholders Own and have Owned continuously throughout the One-Year Period the Requisite Percentage, and each Requesting Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, one or more written statements from the record holder(s) and such intermediaries verifying such Requesting Stockholder's continuous Ownership of the Requisite Percentage through the record date; and (iii) in addition, the Requesting Stockholders and record holder(s), if any, on whose behalf the Special Meeting Request is being made shall (x) further update and supplement the information provided in the Special Meeting Request, if necessary, so that the information provided or required to be provided therein shall be true and correct as of the record date for the Stockholder Requested Special Meeting, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting and (y) promptly provide any other information reasonably requested by the corporation; (B) a statement of the specific purpose(s) of the special meeting and the reasons for conducting such business at the Stockholder Requested Special Meeting and the text of any resolutions proposed for consideration; (C) in the case of any director nominations proposed to be presented at the special meeting, the information required by Section 2.11 of this Article II; (D) an agreement by the Requesting Stockholders to notify the corporation promptly in the event of any disposition prior to the record date for the Stockholder Requested Special Meeting of shares of the corporation Owned and an acknowledgement that any such disposition shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares; (E) a representation that each Requesting Stockholder, or one or more representatives of each such stockholder, intends to appear in person or by proxy at the special meeting to present the nomination(s) or business to be brought before the special meeting; and (F) in the case of a Special Meeting Request by a group of Requesting Stockholders acting together, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the corporation and to act on behalf of all members of the group with respect to all matters relating to the Special Meeting Request (including the requirement to appear in person or by proxy at the special meeting);

(iii) A Special Meeting Request shall not be valid, and a Stockholder Requested Special Meeting shall not be held, if: (A) the Special Meeting Request does not comply with this Section 2.14(b); (B) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law (as determined in good faith by the Board of Directors); (C) the Special Meeting Request is

delivered during the period commencing one hundred and twenty (120) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the earlier of (x) the date of the next annual meeting and (y) thirty (30) days after the first anniversary of the date of the previous annual meeting; (D) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election of directors, was presented at an annual or special meeting of stockholders held not more than twelve (12) months before the Special Meeting Request is delivered; (E) a Similar Item was presented at an annual or special meeting of stockholders held not more than one hundred and twenty (120) days before the Special Meeting Request is delivered (and, for purposes of this clause (E), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); (F) a Similar Item is included in the corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within one hundred and twenty (120) days of the receipt by the corporation of a Special Meeting Request (and, for purposes of this clause (F), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); or (G) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law.

(iv) A Stockholder Requested Special Meeting shall be held at such place, on such date, and at such time as the Board of Directors shall fix; provided, however, that the Stockholder Requested Special Meeting shall not be held more than one hundred and twenty (120) days after receipt by the corporation of a valid Special Meeting Request.

(v) The Requesting Stockholders may revoke a Special Meeting Request by written revocation delivered to the secretary at the principal executive offices of the corporation at any time prior to the Stockholder Requested Special Meeting. If, at any point after sixty (60) days following the earliest dated Special Meeting Request, the unrevoked requests from Requesting Stockholders (whether by specific written revocation or deemed revocation pursuant to clause (D) of Section 2.14(b)(ii)) represent in the aggregate less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the Stockholder Requested Special Meeting.

(vi) In determining whether a special meeting of stockholders has been requested by the Requesting Stockholders representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the secretary of the corporation will be considered together only if (A) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board of Directors (which, if such purpose is the election or removal of directors, changing the size of the Board of Directors and/or the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors, will mean that the exact same person or persons are proposed for election or removal in each relevant Stockholder Meeting Request), and (B) such Special Meeting Requests have been dated and delivered to the secretary of the corporation within 60 days of the earliest dated Special Meeting Request.

(vii) If none of the Requesting Stockholders appear or send a duly authorized agent to present the business to be presented for consideration specified in the Special Meeting Request, the corporation need not present such business for a vote at the Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the corporation.

(viii) Business transacted at any Stockholder Requested Special Meeting shall be limited to (A) the purpose(s) stated in the Special Meeting Request submitted by Requesting Stockholders who Own the Requisite Percentage and who have complied in full with the requirements set forth in these Bylaws through the time of such special meeting and (B) any additional matters that the Board of Directors determines to include in the corporation's notice of the Stockholder Requested Special Meeting.

ARTICLE III

DIRECTORS

Section 3.1. The number of directors of this corporation that shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors; provided, however, that no decrease in the number of directors shall have the effect of shortening the term of an incumbent director.

Section 3.2. With the exception of the first Board of Directors, which shall be elected by the incorporator and except as provided in the corporation's Certificate of Incorporation, the Board of Directors shall be elected at the annual meeting of stockholders, with each director to hold office for a term expiring at the annual meeting of stockholders following the annual meeting where each director was elected to hold office until his successor is elected and qualified. Effective as of the first meeting of stockholders at which the directors will be elected following the 2012 annual meeting of stockholders, a nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election, subject to the rights of the holders of any series of Preferred Stock to elect directors in accordance with the terms thereof; provided, however, that the directors shall be elected by a plurality of the shares cast at any meeting of stockholders at which the number of nominees exceeds the number of directors to be elected. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

Section 3.3. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next election of the class for which such directors were chosen and until their successors are duly elected and qualified or until earlier resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 3.4. The business of the corporation shall be managed by or under the direction of its Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD OF DIRECTORS

Section 3.5. The Board of Directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 3.6. The first meeting of each newly elected Board of Directors shall be held immediately following the annual meeting of stockholders and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event the meeting is not held immediately following the annual meeting of stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 3.7. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors.

Section 3.8. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors or the chief executive officer on twelve (12) hours' notice to each director either personally or by telephone, telegram, facsimile or electronic mail; special meetings shall be called by the chief executive officer or secretary in like manner and on like notice on the written request of a majority of the Board of Directors unless the Board of Directors consists of only one director, in which case special meetings shall be called by the Chairman of the Board of Directors, the chief executive officer or secretary in like manner and on like notice on the written request of the sole director. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

Section 3.9. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, 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 3.10. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, 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 the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 3.11. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

COMMITTEES OF DIRECTORS

Section 3.12. (a) The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(b) In the absence of disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(c) Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending these Bylaws; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Section 3.13. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

COMPENSATION OF DIRECTORS

Section 3.14. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

PROXY ACCESS FOR DIRECTOR NOMINATIONS

Section 3.15. (a) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 15, the corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board of Directors or any committee thereof, the name, together with the Required Information (as defined below), of any person nominated for election to the Board of Directors by an Eligible Stockholder (as defined in clause (d) below of this Section 15) pursuant to and in accordance with this Section 15 (a "Stockholder Nominee"). For purposes of this Section 15, the "Required Information" that the corporation will include in its proxy statement is (i) the information provided to the secretary of the corporation concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and (ii) if the Eligible Stockholder so elects, a Supporting Statement (as defined in clause (h) of this Section 15). For the avoidance of doubt, nothing in this Section 15 shall limit the corporation's ability to solicit against any Stockholder Nominee or include in its proxy materials the corporation's own statements or other information relating to any Eligible Stockholder or Stockholder Nominee, including any information provided to the corporation pursuant to this Section 15. Subject to the provisions of this Section 15, the name of any Stockholder Nominee included in the corporation's proxy statement for an annual meeting of stockholders shall also be set forth on the form of proxy distributed by the corporation in connection with such annual meeting.

(b) In addition to any other applicable requirements, for a nomination to be made by an Eligible Stockholder pursuant to this Section 15, the Eligible Stockholder shall have given timely notice thereof (a "Notice of Proxy Access Nomination") in proper written form to the secretary of the corporation and shall expressly request in the Notice of Proxy Access Nomination to have such nominee included in the corporation's proxy materials pursuant to this Section 15. To be timely, a Notice of Proxy Access Nomination shall be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the anniversary of the date that the corporation first distributed its proxy statement to stockholders for the immediately preceding annual meeting of stockholders. In no event shall the adjournment or postponement of an annual meeting, or the public disclosure thereof, commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination as described above.

(c) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 15 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%) (such greater number, as it may be adjusted pursuant to this Section 15(c), the "Permitted Number"). 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 and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In addition, the Permitted Number shall be reduced by (i) the number of individuals who will be included in the corporation's proxy materials as nominees recommended by the Board of Directors pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of stock from the corporation by such stockholder or group of stockholders), and (ii) the number of directors in office as of the Final Proxy Access Nomination Date who were included in the corporation's proxy materials as Stockholder Nominees for any of the two (2) preceding annual meetings of stockholders (including any persons counted as Stockholder Nominees pursuant to the immediately succeeding sentence) and whose re-election at the upcoming annual meeting is being recommended by the Board of Directors. For purposes of determining when the Permitted Number has been reached, any individual nominated by an Eligible Stockholder for inclusion in the corporation's proxy materials pursuant to this Section 15 whose nomination is subsequently withdrawn or whom the Board of Directors decides to nominate for election to the Board of Directors shall be counted as one of the Stockholder Nominees. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 15 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials in the event that the total number of Stockholder Nominees submitted by Eligible

Stockholders pursuant to this Section 15 exceeds the Permitted Number. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 15 exceeds the Permitted Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 15 from each Eligible Stockholder will be selected for inclusion in the corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of common stock of the corporation each Eligible Stockholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 15 from each Eligible Stockholder has been selected, then the next highest ranking Stockholder Nominee who meets the requirements of this Section 15 from each Eligible Stockholder will be selected for inclusion in the corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. Notwithstanding anything to the contrary contained in this Section 15, the corporation shall not be required to include any Stockholder Nominees in its proxy materials pursuant to this Section 15 for any meeting of stockholders for which the secretary of the corporation receives a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate one or more persons for election to the Board of Directors pursuant to Section 2.11(a)(ii) of these Bylaws.

(d) An "Eligible Stockholder" is a stockholder or group of no more than twenty (20) stockholders (counting as one stockholder, for this purpose, any two (2) or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has Owned (as defined in clause (e) below of this Section 15) continuously for at least three (3) years (the "Minimum Holding Period") a number of shares of common stock of the corporation that represents at least three percent (3%) of the outstanding shares of common stock of the corporation as of the date the Notice of Proxy Access Nomination is received at the principal executive offices of the corporation in accordance with this Section 15 (the "Required Shares"), (ii) continues to Own the Required Shares through the date of the annual meeting, and (iii) meets all other requirements of this Section 15. A "Qualifying Fund Group" means two (2) or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer, or (iii) a "group of investment companies" as such term is defined in Section 12(d)(1)(G)(ii) of the Investment corporation Act of 1940, as amended. Whenever the Eligible Stockholder consists of a group of stockholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 15 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has Owned continuously throughout the Minimum Holding Period in order to meet the three percent (3%) Ownership requirement of the "Required Shares" definition), and (ii) a breach of any obligation, agreement or representation under this Section 15 by any member of such group shall be deemed a breach by the Eligible Stockholder. No stockholder may be a member of more than one group of stockholders constituting an Eligible Stockholder with respect to any annual meeting.

(e) For purposes of this Section 15, a stockholder shall be deemed to "Own" only those outstanding shares of common stock of the corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares, and (ii) 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 (i) and (ii) shall not include any shares (A) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (B) 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 (C) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar instrument or agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) 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 (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "Own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's Ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on

five (5) business days' notice and includes in the Notice of Proxy Access Nomination an agreement that it will (A) promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the corporation's proxy materials, and (B) continue to hold such recalled shares through the date of the annual meeting, or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether outstanding shares of common stock of the corporation are "Owned" for these purposes shall be decided by the Board of Directors.

(f) To be in proper written form, a Notice of Proxy Access Nomination shall set forth or be accompanied by the following:

(i) a statement by the Eligible Stockholder (A) setting forth and certifying as to the number of shares it Owns and has Owned continuously throughout the Minimum Holding Period, (B) agreeing to continue to Own the Required Shares through the date of annual meeting, and (C) indicating whether it intends to continue to own the Required Shares for at least one (1) year following the annual meeting;

(ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is delivered to or mailed and received at the principal executive offices of the corporation, the Eligible Stockholder Owns, and has Owned continuously throughout the Minimum Holding Period, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, one or more written statements from the record holder and such intermediaries verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the record date;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;

(iv) the information, representations, agreements and other documents that would be required to be set forth in or included with a Nomination Notice pursuant to Section 2.11(b) (including the written consent of each Stockholder Nominee to being named as a nominee and to serving as a director if elected and the written representation and agreement of each Stockholder Nominee required by Section 16);

(v) a representation that the Eligible Stockholder (A) did not acquire, and is not holding, any securities of the corporation for the purpose or with the intent of changing or influencing control of the corporation, (B) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) it is nominating pursuant to this Section 15, (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 other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (D) has not distributed and will not distribute to any stockholder of the corporation any form of proxy for the annual meeting other than the form distributed by the corporation, (E) has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting, and (F) has provided and 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 Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provided to the corporation, (B) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 15 or any solicitation or other activity in connection therewith, and (C) file with the Securities and Exchange Commission any solicitation or other communication with the stockholders of the corporation relating to the meeting at which its Stockholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(vii) in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 15 (including withdrawal of the nomination); and

(viii) in the case of a nomination by an Eligible Stockholder consisting of a group of stockholders in which two (2) or more funds are intended to be treated as one stockholder for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(g) In addition to the information required or requested pursuant to Section 15(f) or any other provision of these Bylaws, (i) the corporation may require any proposed Stockholder Nominee to furnish any other information that (A) may reasonably be requested by the corporation to determine whether the Stockholder Nominee would be independent under the Independence Standards, (B) could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee, or (C) may reasonably be requested by the corporation to determine the eligibility of such Stockholder Nominee to be included in the corporation's proxy materials pursuant to this Section 15 or to serve as a director of the corporation, and (ii) the corporation may require the Eligible Stockholder to furnish any other information that may reasonably be requested by the corporation to verify the Eligible Stockholder's continuous Ownership of the Required Shares throughout the Minimum Holding Period and through the date of the annual meeting.

(h) The Eligible Stockholder may, at its option, provide to the secretary of the corporation, at the time the Notice of Proxy Access Nomination is provided, a written statement, not to exceed five hundred (500) words, in support of its Stockholder Nominee(s)' candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Stockholder (including any group of stockholders together constituting an Eligible Stockholder) in support of its Stockholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 15, the corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule or regulation.

(i) In the event that any information or communications provided by an Eligible Stockholder or a Stockholder Nominee to the corporation or its stockholders is not, when provided, or thereafter ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the secretary of the corporation of any such defect and of the information that is required to correct any such defect. Without limiting the foregoing, an Eligible Stockholder shall provide immediate notice to the corporation if the Eligible Stockholder ceases to Own any of the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the corporation pursuant to this Section 15 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for the annual meeting, and such update and supplement shall be delivered to or mailed and received by the secretary at the principal executive offices of the corporation not later than five (5) business days after the record date. For the avoidance of doubt, no notification, update or supplement provided pursuant to this Section 15(i) or otherwise shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 15).

(j) Notwithstanding anything to the contrary contained in this Section 15, the corporation shall not be required to include in its proxy materials, pursuant to this Section 15, any Stockholder Nominee (i) who would not be an independent director under the Independence Standards, (ii) 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 securities exchanges upon which the stock of the corporation is listed or traded, or any applicable law, rule or regulation, (iii) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (iv) 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, (v) 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, or (vi) who shall have provided any information to the corporation or its stockholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

(k) Notwithstanding anything to the contrary set forth herein, if (i) a Stockholder Nominee and/or the applicable Eligible Stockholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 15, or (ii) a Stockholder Nominee otherwise becomes ineligible for inclusion in the corporation's proxy materials pursuant to this Section 15, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Directors or any committee thereof or the presiding officer of the annual meeting, (A) the corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (B) the corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder, and (C) the presiding officer of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(l) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least twenty-five percent (25%) of the votes cast in favor of such Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 15 for the next two (2) annual meetings of stockholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to Section 2.11(a)(ii) of these Bylaws.

(m) This Section 15 provides the exclusive method for a stockholder to include nominees for election to the Board of Directors in the corporation's proxy materials.

DIRECTOR NOMINEE REPRESENTATION AND AGREEMENT

Section 3.16. In order to be eligible for election or re-election as a director of the corporation, a person shall deliver to the secretary at the principal executive offices of the corporation a written representation and agreement that such person (a) is not and will not become a party to (i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such 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 in such representation and agreement, or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with such person's nomination, candidacy, service or action as a director that has not been disclosed to the corporation in such representation and agreement, (c) would be in compliance, if elected as a director of the corporation, and will comply with the corporation's code of business ethics, corporate governance guidelines, securities trading policies and any other policies or guidelines of the corporation applicable to directors, and (d) will make such other acknowledgments, enter into such agreements and provide such information as the Board of Directors requires of all directors, including promptly submitting all completed and signed questionnaires required of the corporation's directors.

REMOVAL OF DIRECTORS

Section 3.17. Unless otherwise restricted by the Certificate of Incorporation or Bylaws, any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of shares entitled to vote at an election of directors.

ARTICLE IV

NOTICES

Section 4.1. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice (except as provided in Section 8 of Article III of these Bylaws), but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telephone, telegram or facsimile.

Section 4.2. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

OFFICERS

Section 5.1. The officers of the corporation shall be chosen by the Board of Directors and shall be a chief executive officer, a president, a chief financial officer and a secretary. The Board of Directors may elect from among its members a Chairman of the Board of Directors. The Board of Directors may also choose one or more vice presidents, assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 5.2. The Board of Directors at its first meeting after each annual meeting of stockholders shall choose a chief executive officer, a president, a chief financial officer, and a secretary and may choose vice presidents.

Section 5.3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 5.4. The salaries of all officers of the corporation shall be fixed by the Board of Directors or any committee established by the Board of Directors for such purpose. The salaries of agents of the corporation shall, unless fixed by the Board of Directors, be fixed by the president or any vice president of the corporation.

Section 5.5. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the corporation shall be filled by the Board of Directors.

THE CHAIRMAN OF THE BOARD

Section 5.6. The Chairman of the Board of Directors, if such an officer is elected, shall exercise and perform such powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

CHIEF EXECUTIVE OFFICER

Section 5.7. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board of Directors, if there be such an officer, the chief executive officer shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and the officers of the corporation. He shall preside at all meetings of the stockholders and, at all meetings of the Board of Directors. He shall have the general powers and duties of management usually vested in the

office of the chief executive officer of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

PRESIDENT

Section 5.8. In the absence or disability of the chief executive officer, the president shall perform all the duties of the chief executive officer (except presiding at meetings of the Board of Directors), and when so acting shall have all of the powers of, and be subject to all the restrictions upon, the chief executive officer. The president shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors or these Bylaws or the chief executive officer or the Chairman of the Board of Directors.

CHIEF FINANCIAL OFFICER

Section 5.9. (a) The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transaction of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

(b) The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the president and directors, whenever they request it, an account of all of his transactions as chief financial officer and of the financial condition of the corporation, and shall have other power and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

SECRETARY

Section 5.10. (a) The secretary shall keep or cause to be kept, at the principal executive office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of directors, committees or directors, and stockholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at the directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings.

(b) The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the corporation's transfer agent or registrar, as determined by resolution of the Board of Directors a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates issued for the same, and the number and date of cancellation of every certificate surrendered for cancellation.

(c) The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by these Bylaws to be given, and he shall keep the seal of the corporation if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

ARTICLE VI

CERTIFICATE OF STOCK

Section 6.1. (a) Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the Chairman of the Board of Directors, the chief executive officer, the president, a vice president, the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him/her in the corporation.

(b) Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

(c) If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, provided, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

(d) Any of or all the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he/she were such officer, transfer agent or registrar at the date of issue.

LOST CERTIFICATES

Section 6.2. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his/her legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

TRANSFER OF STOCK

Section 6.3. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

FIXING RECORD DATE

Section 6.4. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

REGISTERED STOCKHOLDERS

Section 6.5. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or

interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

GENERAL PROVISIONS

DIVIDENDS

Section 7.1. 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, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 7.2. 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 for such other purposes as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

CHECKS

Section 7.3. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

FISCAL YEAR

Section 7.4. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

SEAL

Section 7.5. The Board of Directors may adopt a corporate seal having inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

INDEMNIFICATION

Section 7.6. (a) The corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify any director made, or threatened to be made, a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director of the corporation or a predecessor corporation or, at the corporation's request, a director or officer of another corporation, provided, however, that the corporation shall indemnify any such agent in connection with a proceeding initiated by such agent only if such proceeding was authorized by the Board of Directors of the corporation. The indemnification provided for in this Section 6 shall (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office, (ii) continue as to a person who has ceased to be a director, and (iii) inure to the benefit of the heirs, executors and administrators of such a person. The corporation's obligation to provide indemnification under this Section 6 shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other person.

(b) Expenses incurred by a director of the corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director of the corporation (or was serving at the corporation's request as a director or officer of another corporation) shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it

shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized by relevant sections of the General Corporation Law of Delaware. Notwithstanding the foregoing, the corporation shall not be required to advance such expenses to an agent who is a party to an action, suit or proceeding brought by the corporation and approved by a majority of the Board of Directors of the corporation which alleges willful misappropriation of corporate assets by such agent, disclosure of confidential information in violation of such agent's fiduciary or contractual obligations to the corporation or any other willful and deliberate breach in bad faith of such agent's duty to the corporation or its stockholders.

(c) The foregoing provisions of this Section 6 shall be deemed to be a contract between the corporation and each director who serves in such capacity at any time while this Bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

(d) The Board of Directors in its discretion shall have power on behalf of the corporation to indemnify any person, other than a director, made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was an officer or employee of the corporation.

(e) To assure indemnification under this Section 6 of all directors, officers and employees who are determined by the corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the corporation which may exist from time to time, Section 145 of the General Corporation Law of Delaware shall, for the purposes of this Section 6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including without limitation, any plan of the corporation which is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the corporation shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines."

ARTICLE VIII

AMENDMENTS

Section 8.1. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the affirmative vote of holders of at least a majority vote of the outstanding voting stock of the corporation. These Bylaws may also be altered, amended or repealed or new Bylaws may be adopted by the Board of Directors, when such power is conferred upon the Board of Directors by the Certificate of Incorporation. The foregoing may occur at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

CERTIFICATE OF ADOPTION BY THE SECRETARY OF NETAPP, INC.

The undersigned, Matthew K. Fawcett, hereby certifies that he is the duly elected and acting Secretary of NetApp, Inc., a Delaware corporation (the "Corporation"), and that the Bylaws attached hereto constitute the Bylaws of said Corporation as duly adopted by the Board of Directors and the stockholders of the Corporation and as in effect on the date hereof.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed his name this 27th day of April, 2018.

/s/ Matthew K. Fawcett
Matthew K. Fawcett
Secretary