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

DIVISION OF
CORPORATION FINANCE

February 26, 2018

Martin P. Dunn
Morrison & Foerster LLP
mdunn@mofo.com

Re: JPMorgan Chase & Co.
Incoming letter dated January 12, 2018

Dear Mr. Dunn:

This letter is in response to your correspondence dated January 12, 2018 concerning the shareholder proposal (the "Proposal") submitted to JPMorgan Chase & Co. (the "Company") by Kenneth Steiner (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated January 17, 2018, January 18, 2018, January 22, 2018, January 25, 2018 and February 11, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

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

February 26, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: JPMorgan Chase & Co.
Incoming letter dated January 12, 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 20% 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.

In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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
***

February 11, 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
JPMorgan Chase & Co. (JPM)
Special Shareholder Meeting Improvement
Frivolous Ratification
Kenneth Steiner

Ladies and Gentlemen:

This is in regard to the January 12, 2018 no-action request.

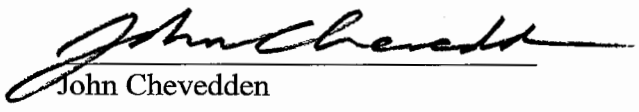
The rule 14a-8 proposal asks the company to change the ownership threshold for shareholder to call a special meeting – period.

The company responds 50 days later with a bundled ratification proposal for the status quo on the ownership threshold plus a laundry list of limitations on the shareholder right to call a special meeting.

Rule 14a-8 was never intended to trigger a bundled company ratification of the status quo on the single topic of the rule 14a-8 proposal – a ratification that would be largely eclipsed by asking shareholders to reinforce the limitations of that shareholder right (Such limitations were not part of the rule 14a-8 proposal to begin with).

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: Kenneth Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

PROPOSAL [ ]: RATIFICATION OF SPECIAL MEETING PROVISIONS IN THE COMPANY'S BY-LAWS

Overview

The Board is seeking shareholder ratification of the provisions of the Company's By-Laws, as amended (the "By-Laws"), that grant shareholders who own at least 20% of the Company's outstanding shares of common stock and satisfy other requirements the ability to direct the Company to call a special meeting of shareholders (the "Special Meeting Provisions").

In 2006, subsequent to a shareholder proposal that passed at the annual meeting and pursuant to the Company's Certificate of Incorporation, the Board amended the Company's By-Laws to allow shareholders who own at least 33% of the Company's outstanding shares of common stock and satisfy other requirements the ability to direct the Company to call a special meeting of shareholders. In 2009, the Company amended its By-Laws to reduce the ownership percentage needed to request that the Company call a special meeting of shareholders (the "Ownership Threshold") from 33% to 20%. Since amending its By-Laws, shareholder proposals to lower the Ownership Threshold further have been voted on at each of the Company's annual meetings held in 2010, 2014, 2015 and 2017. Each such proposal was voted down by the Company's shareholders. The Company's Certificate of Incorporation confers upon the Board the power to further amend the Company's By-laws notwithstanding the vote on previous proposals or on this Proposal.

The Board is hereby requesting that the Company's shareholders ratify its current Special Meeting Provisions.

Ratification of the Special Meeting Provisions

The Special Meeting Provisions, which are set forth in Section 1.02 of the By-Laws, provide:

- One or more shareholders of record (acting on their own behalf or on behalf of beneficial owners) owning shares representing at least 20% of the outstanding shares of common stock of the Company have the ability to require the Company to call a special meeting of the shareholders.
- Stock ownership is determined under a "net long" standard to provide assurance that shareholders 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.
- Shareholders seeking to call a special meeting would be required to provide information similar to the information required for shareholder nominations at annual meetings under the By-Laws.
- 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 not a proper subject for

LIMITATIONS

shareholder action under applicable law;

- an otherwise valid special meeting request is submitted during the period commencing 90 days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 calendar days after the first anniversary of the date of the immediately preceding annual meeting;

- an identical or substantially similar item (as determined in good faith by the Board, a "Similar Item"), other than the election of directors, was presented at a meeting of the shareholders held not more than 12 months before the special meeting request is delivered;

- a Similar Item, including an item related to the removal or election of directors, was presented at a meeting of the shareholders held not more than 90 days before the special meeting request is delivered; or

- a Similar Item is included in the Company's notice as an item of business to be brought before a shareholder meeting that has been called by the time the special meeting request is delivered but not yet held.

The above summary is subject, in all respects, to the Special Meeting Provisions, which are attached to this Proxy Statement as Appendix [ ].

Purpose of the Special Meeting Provisions

Board Consideration of Appropriate Shareholder Special Meeting Rights. The Board evaluated a number of different factors in adopting the existing right of shareholders to call a special meeting and setting the Ownership Threshold at 20%, including the interests of the Company and its shareholder base, the time and resources required to convene a special meeting, and the opportunities shareholders otherwise have to engage with the Board and senior management in between annual meetings.

Significant Costs Associated with Special Shareholder Meetings. Convening a special meeting of shareholders is an extraordinary and expensive event that the Company believes should only be called if a substantial portion of the Company's shareholder base determines that such a meeting is necessary. The current 20% Ownership Threshold ensures that special meetings called by shareholders are of concern to a significant number of shareholders such that they merit these costs, which include the preparation, printing and distribution of disclosure documents, soliciting proxies, tabulating votes and numerous hours spent by management that would otherwise be devoted to managing the day-to-day business operations of the Company.

The Ownership Threshold Ensures that a Significant Portion of the Shareholder Base Believes in the Urgency of Holding a Special Meeting. The Board believes that a small minority of shareholders should not be entitled to utilize the mechanism of special meetings for their own interests, which may not be shared more broadly by the Company's shareholders. Likewise, the Board believes that only shareholders with full and continuing economic interest in our common stock and full voting rights should be entitled to request that the Company call a special meeting.

The Board believes that providing shareholders owning 20% of the Company's outstanding stock with the right to call a special meeting strikes the right balance between enhancing our shareholders' ability to act on important and urgent matters and protecting against misuse of the right by a small number of shareholders whose interests may not be shared by the majority of shareholders.

20% Special Meeting Ownership Threshold is Consistent with Market Practice. The 20% 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 402 of the S&P 500 companies have a special meeting ownership threshold that is equal to or higher than that of the Company or do not provide any such rights. In short, the Company's shareholders have a right that is equal to or more expansive than that of 80% of S&P 500 companies.

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 shareholder rights available under its By-Laws and Certificate of Incorporation, applicable law, and the Company's commitment to shareholder engagement and responsiveness to shareholder concerns as demonstrated by, among other things, holding a formal shareholder outreach program twice a year, covering a wide range of issues with a broad group of shareholders. For additional information about our shareholder engagement and actions we have recently taken in response to these discussions, please see page [ ] of this Proxy Statement.

In addition to the existing right of shareholders to call a special meeting at the 20% Ownership Threshold, shareholder approval is required for many key corporate actions before action may be taken. Under Delaware law and New York Stock Exchange rules, the Company must submit certain important matters to a shareholder vote, including the adoption of equity compensation plans and amendments to its Certificate of Incorporation.

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

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

existing Special Meeting Provisions.

The Board of Directors Unanimously Recommends that Shareholders Vote "FOR" the Proposal to Ratify the Special Meeting Provisions.

JOHN CHEVEDDEN
***

January 25, 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
JPMorgan Chase & Co. (JPM)
Special Meeting
Kenneth Steiner

Ladies and Gentlemen:

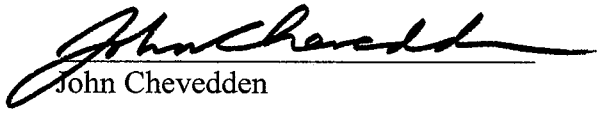
This is in regard to the January 12, 2018 no-action request.

The company cited an Express Scripts Holding Co. case. The company cited Express Scripts in regard to 2-words in the supporting statement of the proposal ("full right"). To address the company concern these 2-words could have been replaced with "ability."

Express Scripts was not first vetted in the no action process. In a similar and later 2014 federal case, that was not favorable for the company bringing the case, the Court expressed preference that any future case be first vetted through the no action process before bringing it to the Court.

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: Kenneth Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

JOHN CHEVEDDEN
***

January 22, 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
JPMorgan Chase & Co. (JPM)
Special Meeting
Kenneth Steiner

Ladies and Gentlemen:

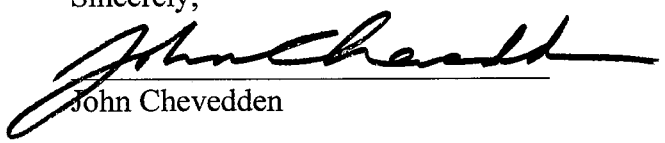
This is in regard to the January 12, 2018 no-action request.

The company cited an Express Scripts Holding Co. case. This was in regard to two words in the supporting statement ("full right"). To address the company concern these 2 words could have been replaced with "ability."

Express Scripts was not first vetted in the no action process. In a similar and later 2014 case, that was not favorable for the company bringing the case, the Court expressed preference that any future case be first vetted through the no action process before coming to the Court.

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: Kenneth Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

JOHN CHEVEDDEN
***

January 18, 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
JPMorgan Chase & Co. (JPM)
Special Meeting
Kenneth Steiner

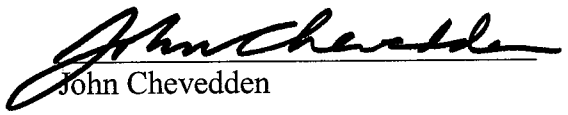
Ladies and Gentlemen:

This is in regard to the January 12, 2018 no-action request.

In regard to page 5 of the company letter, the company does not claim that its shareholders have the full ability to call a special meeting that is available under state law.

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: Kenneth Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

JOHN CHEVEDDEN
***

January 17, 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
JPMorgan Chase & Co. (JPM)
Special Meeting
Kenneth Steiner

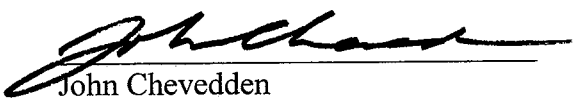
Ladies and Gentlemen:

This is in regard to the January 12, 2018 no-action request.

"Linda B. Bammann was Deputy Head of Risk Management at JPMorgan Chase from July 2004 until her retirement in 2005" according to the 2017 JPM proxy and to respond to the company objection on the bottom of page 5.

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: Kenneth Steiner

Molly Carpenter <molly.carpenter@jpmchase.com>

[JPM – Rule 14a-8 Proposal, November 21, 2017 | Revised Decmber 6, 2017]12-6
[This line and any line above it is not for publication.]

Proposal [4] –Special Shareholder Meeting Improvement

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

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to JPMorgan Chase's higher requirement. JPMorgan shareholders do not have the full right to call a special meeting that is available under state law.

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

This proposal topic also won 43% support at our 2017 annual meeting. This 43%-support would have been higher (possibility above 48%) if small shareholders had the same access to corporate governance information as large shareholders.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the refreshment of our board of directors after the 2018 annual meeting. We had 5 directors who had more than 13-years long tenure. Long-tenure can impair the independence of a director no matter how well qualified.

There is concern about directors who joined the board relatively recently. Linda Bammann, who joined the JPM board in 2013, is not an independent director. Todd Combs who joined the board in 2016 did not have any director experience with a company of any size – and JPM has a market cap of $350 billion.

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

MORRISON | FOERSTER

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LOS ANGELES, NEW YORK,
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SAN DIEGO, SAN FRANCISCO, SHANGHAI,
SINGAPORE, TOKYO, WASHINGTON, D.C.

Writer's Direct Contact
+1 (202) 778.1611
MDunn@mofo.com

1934 Act/Rule 14a-8

January 12, 2018

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

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

Re: JPMorgan Chase & Co.
Shareholder Proposal of Kenneth Steiner

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client JPMorgan Chase & Co., a Delaware corporation (the "***Company***"), which requests confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the "***Exchange Act***"), the Company omits the enclosed shareholder proposal (the "***Proposal***") submitted by Kenneth Steiner (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Shareholders (the "***2018 Proxy Materials***").

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

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

- concurrently sent copies of this correspondence to the proponent's representative, John Chevedden (the "***Proponent's Representative***").

Copies of the Proposal and Supporting Statement, the Proponent's cover letter submitting the Proposal, and other correspondence relating to the Proposal are attached hereto as Exhibit A.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, via email at mdunn@mofo.com or via facsimile at (202) 887-0763, and to John Chevedden, the Proponent's Representative, via email at ***

I. THE PROPOSAL

On December 6, 2017, the Company received a letter from the Proponent's Representative containing the Proposal for inclusion in the Company's 2018 Proxy Materials.[1] The Proposal reads as follows:

> **"**Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.
>
> Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to JPMorgan Chase's higher requirement. JPMorgan shareholders do not have the full right to call a special meeting that is available under state law.
>
> Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.
>
> This proposal topic also won 43% support at our 2017 annual meeting. This 43%-support would have been higher (possibility above 48%) if small shareholders had the same access to corporate governance information as large shareholders.
>
> An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the refreshment of our board of directors after the 2018 annual meeting. We had 5 directors who had more than 13-years long tenure. Long-tenure can impair the independence of a director no matter how well qualified.
>
> There is concern about directors who joined the board relatively recently. Linda Bammann, who joined the JPM board in 2013, is not an independent director. Todd Combs who joined the board in 2016 did not have any director experience with a company of any size - and JPM has a market cap of $350 billion."

[1] The Proposal that is the subject of this no-action request is revised from its original version, which was submitted to the Company via email on November 21, 2017.

II. EXCLUSION OF THE PROPOSAL

A. Bases for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2018 Proxy Materials in reliance on the following bases:

- Rule 14a-8(i)(3), as the Proposal is materially false and misleading and contrary to Rule 14a-9; and

- Rule 14a-8(i)(9), as the Proposal directly conflicts with the Management Proposal (as defined below) to be submitted to shareholders for ratification at the 2018 Annual Meeting of Shareholders (the "***2018 Annual Meeting***").

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(3), As It Is Materially False and Misleading and Contrary to Rule 14a-9

Rule 14a-8(i)(3) permits a company to omit a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Pursuant to Staff Legal Bulletin No. 14B (Sept. 15, 2004) ("***SLB 14B***"), reliance on Rule 14a-8(i)(3) to exclude a proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the company demonstrates objectively that a factual statement is materially false or misleading.

The Staff has consistently been of the view that a company may exclude shareholder proposals under Rule 14a-8(i)(3) where the company has "demonstrated objectively that certain factual statements in the supporting statement are materially false and misleading such that the proposal as a whole is materially false and misleading." *See, e.g., Ferro Corporation* (March 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which improperly suggested that the shareholders would have increased rights if the Delaware law governed the company instead of Ohio law); *General Electric Co*. (Jan. 6, 2009) (concurring in the exclusion of a proposal under which any director who received more than 25% in "withheld" votes would not be permitted to serve on any key board committee for two years because the company did not typically allow shareholders to withhold votes in director elections); *Johnson & Johnson* (Jan. 31, 2007) (concurring in the exclusion of a proposal to provide shareholders a "vote on an advisory management resolution . . . to approve the Compensation Committee [R]eport" because the proposal would create the false implication that shareholders would receive a vote on executive compensation); *State Street Corp.* (Mar. 1, 2005) (concurring in the exclusion of a proposal requesting shareholder action

pursuant to a section of state law that had been recodified and was thus no longer applicable); *General Magic, Inc.* (May 1, 2000) (concurring in the exclusion of a proposal requesting that the company make "no more false statements" to its shareholders because the proposal created the false impression that the company tolerated dishonest behavior by its employees when in fact the company had corporate policies to the contrary). "[W]hen a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading." Staff Legal Bulletin No. 14 (July 13, 2001) ("***SLB 14***").

In evaluating whether a proposal may be excluded under Rule 14a-8(i)(3), the Staff has stated that it "consider[s] only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks." Staff Legal Bulletin No. 14G (Oct. 16, 2012). In applying Rule 14a-8(i)(3), the Staff has stated that a company must "demonstrate[ ] objectively that the proposal is materially false or misleading." *See, e.g., Bank of America Corp*. (Feb. 9, 2016).

The Company is of the view that the Proposal is demonstrably "materially false and misleading" such that the Proposal may be omitted in its entirety.

1. The Supporting Statement Contains Two Objectively False Statements that Cause the Entire Proposal to be Materially False and Misleading Regarding its Fundamental Premise

The Company believes that it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(3), as the Proposal is materially false and misleading, contrary to Rule 14a-9, with regard to its fundamental premise.

Here, the Proposal contains two false and misleading statements that are integral to the Proposal's central concept of endorsing a change to the Company's governing documents that would allow future actions by shareholders. In the final paragraph of the Supporting Statement, the Proponent states the fundamental purpose the Proposal is intended to accomplish – the Proponent states that the Proposal, if implemented, would allow an "enhanced ability of shareholders to call a special meeting" such that shareholders would have "greater standing to have input in improving the refreshment of our board of directors after the 2018 annual meeting." The Company is of the view that two objectively false statements within the Proposal relate to this fundamental purpose, namely false statements regarding (1) the right to call shareholder meetings under Delaware law and (2) the independence of a director.

a. The Supporting Statement Contains an Objectively False Statement Regarding Delaware Law

The first paragraph of the Supporting Statement reads:

"Scores of Fortune 500 companies allow a [sic] 10% of shares to call a special meeting compared to JPMorgan Chase's higher requirement. *JPMorgan shareholders do not have the full right to call a special meeting that is available under state law*." (Emphasis added).

The Supporting Statement is materially misleading because it misstates important principles of Delaware corporate law. Contrary to the Supporting Statement's assertion, Delaware law does not prescribe that shareholders owning a certain threshold of outstanding shares may call a special meeting. In this regard, Delaware law does not in any way require that a company provide stockholders with any right to call a special meeting. Instead, Delaware law merely provides companies with the discretion to provide shareholders with the ability to call a special meeting; there is no underlying state law right that may be altered by a company. Put differently, a shareholder's ability to call a special meeting is established and evidenced solely by the company's governance documents. Section 211(d) of the Delaware General Corporation Law states that "[s]pecial meetings of the stockholders may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws." There is otherwise no case law or supplemental statute that interprets this provision to prescribe an ownership threshold. Accordingly, the above statement is, objectively, a false statement. This demonstrably false statement also appears to form the foundation for the premise of the Proposal; that is, because the Proponent believes the Company's ownership threshold to allow shareholders to call a special meeting is greater than that allegedly provided by Delaware law, "JPMorgan shareholders do not have the full right to call a special meeting that is available under state law." The Proponent's stated underlying premise of the Proposal, therefore, is fundamentally false and misleading because it materially misstates the Company's corporate governance provisions as compared with Delaware law, particularly with respect to granting shareholders the ability to call a special meeting.

b. The Supporting Statement Contains an Objectively False Statement Regarding the Independence of a Director

The last paragraph of the Supporting Statement reads, in relevant part:

"There is concern about directors who joined the board relatively recently. *Linda Bammann, who joined the JPM board in 2013, is not an independent director*." (Emphasis added).

Like a substantial majority of the Company's directors, Linda Bammann has been determined by the Board to be independent under the New York Stock Exchange's ("***NYSE***") and the Company's independence standards. In fact, all of the Company's non-management Board members are independent under the standards established by the NYSE and the Company's independence standards. Directors are determined to be independent if they have no disqualifying relationship, as defined by the NYSE, and if the Board has affirmatively determined they have no material relationship with the Company, directly or as a partner, shareholder or officer of an organization that has a relationship with the Company. The Board has made this determination of Ms. Bammann every year since she joined the board in 2013. Accordingly, the above statement is, objectively, false and misleading. This false statement also appears to form the foundation for the purpose of the Proposal; that is, implementation of the Proposal is necessary to "give shareholders greater standing to have input in improving the refreshment of [the Company's] board of directors after the 2018 annual meeting" because "[t]here is concern about directors who joined the board relatively recently," such as Ms. Bammann. As such, the Proponent uses the false statement regarding Ms. Bammann's independence as a fundamental reason why a lower special meeting threshold is necessary to effectuate Board refreshment by shareholders.

The materiality under Rule 14a-8(i)(3) of the Supporting Statement's false and misleading assertions regarding corporate governance matters is demonstrated by the court's holding in *Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014). There, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court held that, "when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company's existing corporate governance practices are important to the stockholder's decision whether to vote in favor of the proposed measure," and therefore are material. Applying *Express Scripts* to the Proposal demonstrates that the false and misleading statements in the Proposal and its Supporting Statement would be material to shareholders' voting decisions regarding the Proposal. As explained above, the Supporting Statement states specifically that the Company does not afford its shareholders the "full right" to call a special meeting under Delaware law. The Supporting Statement also implies that the Company's shareholders should be granted an enhanced right to declare a special meeting because a specific director is not independent, despite the Board of Directors conclusion over multiple years that she is independent in accordance with the listing standards of the NYSE and the Company's independence standards. These false and misleading statements impermissibly mislead shareholders considering the proposals, which render the Proposal and the Supporting Statement fundamentally false and misleading. Accordingly, the Company is of the view that it may exclude the Proposal under Rule 14a-8(i)(3).

As demonstrated above, the Proposal and Supporting Statement are so fundamentally false and misleading as to cause the Proposal to be materially false and misleading and contrary to Rule 14a-9 regarding its fundamental premise. The Company, therefore, is of the view that it may properly omit the Proposal and Supporting Statement in reliance on Rule 14a-8(i)(3), as the Proposal and Supporting Statement are materially false and misleading and contrary to Rule 14a-9.

C. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(9), As It Directly Conflicts with a Management Proposal to be Submitted to Shareholders for Ratification at the 2018 Annual Meeting

Rule 14a-8(i)(9) permits a company to omit a proposal from its proxy materials "[i]f the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." In Staff Legal Bulletin No. 14H (Oct. 12, 2015) ("***SLB 14H***"), the Staff announced an updated policy regarding the application of Rule 14a-8(i)(9), stating that consideration of when a shareholder proposal may be omitted under Rule 14a-8(i)(9) should be based on whether there is a direct conflict between the management and shareholder 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*.

(Emphasis added).

The Company intends to include a proposal at the 2018 Annual Meeting (the "***Management Proposal***") seeking shareholder ratification of the current aggregate ownership threshold to call a special meeting of shareholders contained in Section 1.02 of the Company's By-laws, as amended (the "***By-laws***"). The Company's By-laws are attached hereto as Exhibit B, and the text of the Management Proposal is attached hereto as Exhibit C.

Section 1.02 of the By-laws states that the Company's Board of Directors must call a special meeting of shareholders upon the written request(s) of shareholders of record representing in the aggregate at least 20% of the outstanding shares. The Proposal requests that the 20% ownership threshold for calling a special meeting be decreased to 10%. In contrast, the Management Proposal seeks ratification of the current 20% ownership threshold set forth in Section 1.02 of the By-laws. Therefore, the Proposal directly conflicts with the Management Proposal, such that the Company's shareholders could not logically vote for both the Shareholder Proposal and the Management Proposal.

In SLB 14H, the Staff provided examples of situations in which "a reasonable shareholder could not logically vote for both" a management and shareholder proposal. For example, where a company seeks shareholder approval of a merger, and a shareholder proposal asks shareholders to vote against the merger, the Staff agreed that the proposals directly conflict. Similarly, if a shareholder proposal asks for the separation of the company's chairman and CEO, and a management proposal seeks approval of a bylaw provision requiring the CEO to be the chair at all times, the Staff agreed that the proposals directly conflict. The direct conflict between the Proposal and the Management Proposal is consistent with those examples set forth in SLB 14H. A shareholder cannot logically vote in favor of the Management Proposal to ratify the special meeting provisions in Section 1.02 of the By-laws, including the 20% ownership threshold, and also vote in favor of the Proposal that requests a significant amendment to Section 1.02 of the By-laws by revising the 20% ownership threshold to a 10% ownership threshold. Consistent with the guidance of SLB 14H, "a vote for one proposal is tantamount to a vote against the other proposal;" *e.g.*, a vote for the Proposal is equivalent with a vote against the Management Proposal.

The Staff has concurred that shareholder proposals seeking to amend an existing governance feature that is in opposition to the provisions of a management proposal seeking to retain such governance feature, to be submitted for shareholder vote at the same annual meeting, is in direct conflict with management's proposal and, as such, may be omitted under Rule 14a-8(i)(9). In *The AES Corp.* (Dec. 19, 2017), the proposal requested that the board 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. The company argued that the proposal is in direct conflict with a company proposal – to be introduced for stockholder vote at the same annual meeting – which seeks ratification of the current 25% ownership threshold set forth in the company's bylaws. The Staff agreed with the company, noting that the proposal "directly conflicts with management's proposal because a reasonable shareholder could not logically vote in favor of both proposals." The circumstances in *The AES Corp*. are substantially identical to the Company's circumstances – the proposal in *The AES Corp.* and the Proposal both seek to lower shareholder ownership thresholds related to special meetings to 10% of the outstanding

securities. In addition, management in *AES Corp*. intended to introduce a proposal at the same annual meeting – as the Company intends to do with the Management Proposal – seeking ratification of existing bylaw provisions regarding shareholder ownership thresholds related to special meetings. The Company is of the view that the Staff, as it did in *The AES Corp.*, should concur that the Proposal directly conflicts with the Management Proposal, such that the Proposal may be omitted from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(9). *See also Illumina, Inc*. (Mar. 18, 2016) (concurring in the omission of a proposal seeking 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) and *Herley Industries, Inc*. (Nov. 20, 2007) (concurring in the omission of a proposal seeking to amend the company's bylaws to provide for a majority vote standard for the election of directors, when the company intended to submit for stockholder approval at the same annual meeting a proposal to amend its bylaws to maintain the plurality vote standard that was in place (as well as to add a director resignation policy)).

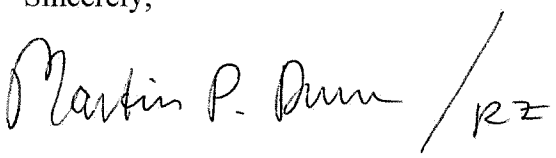
As with the Proposal and the Management Proposal, the management proposals in *AES Corp.*, *Illumina* and *Herley* sought shareholder ratification and approval of existing provisions in each company's governing documents that directly conflicted with a shareholder proposal to be presented at the same annual meeting, and the Staff concurred with the omission of those proposals. Consistent with *The AES Corp.*, *Illumina* and *Herley*, the Company is of the view that, pursuant to SLB 14H, a shareholder cannot logically vote for the Proposal and the Management Proposal; a vote in favor of one proposal would be "tantamount to a vote against" the other proposal. An affirmative vote on both the Proposal and the Management Proposal would result in exactly the kind of conflict that Rule 14a-8(i)(9) was designed to prevent.

For the reasons discussed above, the Company is of the view that it may properly omit the Proposal and Supporting Statement in reliance on Rule 14a-8(i)(9), as the Proposal directly conflicts with the Management Proposal to be submitted to shareholders for ratification at the 2018 Annual Meeting.

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2018 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 778-1611.

Sincerely,



Martin P. Dunn
of Morrison & Foerster LLP

Attachments

cc: John Chevedden
Molly Carpenter, Corporate Secretary, JPMorgan Chase & Co.

Exhibit A

From:	***
To:	Horan, Anthony
Cc:	Caracciolo, Irma R.; Scott, Linda E
Subject:	Rule 14a-8 Proposal (JPM)``
Date:	Tuesday, November 21, 2017 8:51:34 PM
Attachments:	CCE21112017_19.pdf

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

Kenneth Steiner
***

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

Dear Mr. Horan,

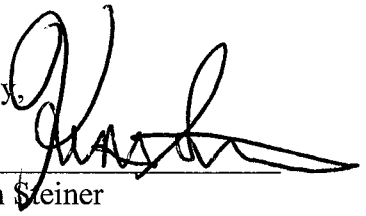
I purchased stock in our company because I believed our company had greater potential. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve compnay performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,



Kenneth Steiner

10-6-17

Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

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

[JPM – Rule 14a-8 Proposal, November 21, 2017]12-6
[This line and any line above it is not for publication.]

Proposal [4] –Special Shareholder Meeting Improvement

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

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to JPMorgan Chase's higher requirement. JPMorgan shareholders do not have the full right to call a special meeting that is available under state law.

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

This proposal topic also won 43% support at our 2017 annual meeting. This 43%-support would have been higher (possibility above 48%) if small shareholders had the same access to corporate governance information as large shareholders.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the refreshment of our board of directors. We had 5 directors who had more than 13-years long tenure. Long-tenure can impair the independence of a director no matter how well qualified.

There is concern about directors who joined the board relatively recently. Linda Bammann, who joined the JPM board in 2013, is not an independent director. Todd Combs who joined the board in 2016 did not have any director experience with a company of any size – and JPM has a market cap of $350 billion.

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

Kenneth Steiner, *** sponsors this proposal.

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

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

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

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

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

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

From:	***
To:	Horan, Anthony
Cc:	Caracciolo, Irma R.; Scott, Linda E
Subject:	Rule 14a-8 Proposal (JPM) blb
Date:	Monday, November 27, 2017 3:11:11 PM
Attachments:	CCE27112017_17.pdf

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

Ameritrade

11/27/2017

Kenneth Steiner
***

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

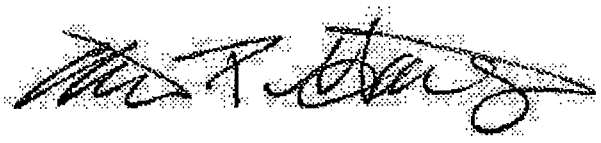
Dear Kenneth Steiner,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than 300 shares of the following stocks in the above referenced account since October 1, 2016.

1. KeyCorp (KEY)
2. NASDAQ, Inc. (NDAQ)
3. JPMorgan Chase & Co (JPM)

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

Sincerely,



Andrew P. Haag
Resource Specialist
TD Ameritrade

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

From: Corporate Secretary
To: ***
Cc: Scott, Linda E; Carpenter, Molly; Corporate Secretary
Subject: JPMC Shareholder Proposal (Chevedden/Steiner)
Date: Friday, December 01, 2017 4:08:38 PM
Attachments: Chevedden Steiner acknowledgement - deficiency_(12912221)_(1).pdf
Rule 14-8 and SLB 14I Attachments.pdf

- External Email -

Dear Mr. Chevedden
Attached is a copy of our letter regarding the shareholder proposal submitted for inclusion in the proxy materials relating to JPMC's 2018 Annual Meeting of Shareholders.

Also, as a reminder, Anthony Horan is no longer associated with this function. To ensure receipt of correspondence from you, please include Molly Carpenter (molly.carpenter@jpmchase.com) and the corporate secretary mailbox (corporate.secretary@jpmchase.com) in the future.

Regards
Irma Caracciolo

Irma R. Caracciolo | JPMorgan Chase |Vice President and Assistant Corporate Secretary |270 Park Avenue, Mail Code: NY1-K721, New York, NY 10017 |W: 212-270-2451 |F: 212-270-4240 | F: 646-534-2396| caracciolo_irma@jpmorgan.com

From: ***
Sent: Tuesday, November 21, 2017 8:51 PM
To: Horan, Anthony <ANTHONY.HORAN@chase.com>
Cc: Caracciolo, Irma R. <caracciolo_irma@jpmorgan.com>; Scott, Linda E <linda.e.scott@chase.com>
Subject: Rule 14a-8 Proposal (JPM)``

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

JPMORGAN CHASE & CO.

Molly Carpenter
Corporate Secretary
Office of the Secretary

December 1, 2017

VIA EMAIL & OVERNIGHT DELIVERY

John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of JPMorgan Chase & Co. ("JPMC"), which received from you, on behalf of Kenneth Steiner (the "Proponent"), via email on November 21, 2017, the shareholder proposal regarding special shareowner meetings (the "Proposal") for consideration at JPMC's 2018 Annual Meeting of Shareholders.

The Proposal contains certain procedural deficiencies, as set forth below, which Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

Proposal by Proxy

A shareholder's ability to submit a "proposal by proxy" must be consistent with Rule 14a-8 and the eligibility requirements of Rule 14a-8(b). The Staff of the SEC's Division of Corporation Finance (the "SEC Staff") provided guidance in Staff Legal Bulletin No. 14I ("SLB 14I") to assist the Staff and companies in their evaluation regarding whether the eligibility requirements of Rule 14a-8(b) have been satisfied. In SLB 14I, the SEC Staff stated that it will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy. The Staff expects the documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;
- identify the specific proposal to be submitted (*e.g.*, proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

The delegation of authority included with the Proponent's submission of the Proposal is inconsistent with the Staff's guidance set forth above because (i) it fails to identify the annual meeting for which the Proposal is submitted; and (ii) it fails to identify the specific proposal to be submitted (*i.e.*, "Special Shareholder Meeting Improvement"). As such, JPMC is of the view that the Proponent has failed to satisfy the eligibility requirements of Rule 14a-8(b).

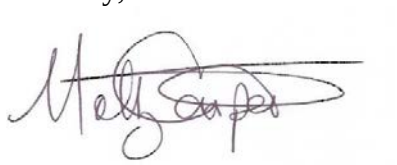
270 Park Avenue, New York, New York 10017-2070
*** FISMA & OMB Memorandum M-07-16 Telephone 212-270-7122 Facsimile 212 270 4240 molly.carpenter@jpmchase.com
JPMorgan Chase & Co.

To remedy those defects, you are requested to submit a sufficient delegation of authority by the Proponent to submit the proposal by proxy.

For your reference, please find enclosed a copy of SEC Rule 14a-8 and SLB 14I.

For the Proposal to be eligible for inclusion in the JPMC's proxy materials for the JPMC's 2018 Annual Meeting of Shareholders, the rules of the SEC require that a response to this letter, correcting all procedural deficiencies described in this letter, be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 270 Park Avenue, 38th Floor, New York NY 10017, or via email to corporate.secretary@jpmchase.com.

Sincerely,



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

270 Park Avenue, New York, New York 10017-2070
Telephone 212-270-7122 Facsimile 212 270 4240 molly.carpenter@jpmchase.com
JPMorgan Chase & Co.

Rule 14a-8 –– Proposals of Security Holders

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, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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

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

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

(c) Question 3: How many proposals may I submit?

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) Question 4: How long can my proposal be?

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) Question 5: What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 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 Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).

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

(g) Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) Question 8: Must I appear personally at the shareholders' meeting to present the proposal?

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

(2) If the company holds it 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 could 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 Rule 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 earning sand 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) *Relates to election*: 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 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 Rule 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 rule 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, Rule 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 Rule 14a-6.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14I (CF)

Action: Publication of CF Staff Legal Bulletin

Date: November 1, 2017

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

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

Contacts: For further information, please contact the Division's Office of Chief Counsel by submitting a web-based request form at https://www.sec.gov/forms/corp_fin_interpretive.

A. The purpose of this bulletin

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

- the scope and application of Rule 14a-8(i)(7);
- the scope and application of Rule 14a-8(i)(5);
- proposals submitted on behalf of shareholders; and
- the use of graphs and images consistent with Rule 14a-8(d).

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

B. Rule 14a-8(i)(7)

1. Background

Rule 14a-8(i)(7), the "ordinary business" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "deals with a matter relating to the company's ordinary business operations." The purpose of the exception is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting."[1]

2. The Division's application of Rule 14a-8(i)(7)

The Commission has stated that the policy underlying the "ordinary business" exception rests on two central considerations.[2] The first relates to the proposal's subject matter; the second, the degree to which the proposal "micromanages" the company. Under the first consideration, proposals that raise matters that are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight" may be excluded, unless such a proposal focuses on policy issues that are sufficiently significant because they transcend ordinary business and would be appropriate for a shareholder vote.[3] Whether the significant policy exception applies depends, in part, on the connection between the significant policy issue and the company's business operations.[4]

At issue in many Rule 14a-8(i)(7) no-action requests is whether a proposal that addresses ordinary business matters nonetheless focuses on a policy issue that is sufficiently significant. These determinations often raise difficult judgment calls that the Division believes are in the first instance matters that the board of directors is generally in a better position to determine. A board of directors, acting as steward with fiduciary duties to a company's shareholders, generally has significant duties of loyalty and care in overseeing management and the strategic direction of the company. A board acting in this capacity and with the knowledge of the company's business and the implications for a particular proposal on that company's business is well situated to analyze, determine and explain whether a particular issue is sufficiently significant because the matter transcends ordinary business and would be appropriate for a shareholder vote.

Accordingly, going forward, we would expect a company's no-action request to include a discussion that reflects the board's analysis of the particular policy issue raised and its significance. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned. We believe that a well-developed discussion of the board's analysis of these matters will greatly assist the staff with its review of no-action requests under Rule 14a-8(i)(7).

C. Rule 14a-8(i)(5)

1. Background

Rule 14a-8(i)(5), the "economic relevance" exception, is one of the substantive bases for exclusion of a shareholder proposal in Rule 14a-8. It permits a company to exclude a proposal that "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."

2. History of Rule 14a-8(i)(5)

Prior to adoption of the current version of the exclusion in Rule 14a-8(i)(5), the rule permitted companies to omit any proposal that "deals with a matter that is not significantly related to the issuer's business." In proposing changes to that version of the rule in 1982, the Commission noted that the staff's practice had been to agree with exclusion of proposals that bore no economic relationship to a company's business, but that "where the proposal has reflected social or ethical issues, rather than economic concerns, raised by the issuer's business, and the issuer conducts any such business, no matter how small, the staff has not issued a no-action letter with respect to the omission of the proposal."[5] The

Commission stated that this interpretation of the rule may have "unduly limit[ed] the exclusion," and proposed adopting the economic tests that appear in the rule today.[6] In adopting the rule, the Commission characterized it as relating "to proposals concerning the functioning of the economic business of an issuer and not to such matters as shareholders' rights, e.g., cumulative voting."[7]

Shortly after the 1983 amendments, however, the District Court for the District of Columbia in Lovenheim v. Iroquois Brands, Ltd., 618 F. Supp. 554 (D.D.C. 1985) preliminarily enjoined a company from excluding a proposal regarding sales of a product line that represented only 0.05% of assets, $79,000 in sales and a net loss of ($3,121), compared to the company's total assets of $78 million, annual revenues of $141 million and net earnings of $6 million. The court based its decision to grant the injunction "in light of the ethical and social significance" of the proposal and on "the fact that it implicates significant levels of sales." Since that time, the Division has interpreted Lovenheim in a manner that has significantly narrowed the scope of Rule 14a-8(i)(5).

3. The Division's application of Rule 14a-8(i)(5)

Over the years, the Division has only infrequently agreed with exclusion under the "economic relevance" exception. Under its historical application, the Division has not agreed with exclusion under Rule 14a-8(i)(5), even where a proposal has related to operations that accounted for less than 5% of total assets, net earnings and gross sales, where the company conducted business, no matter how small, related to the issue raised in the proposal. The Division's analysis has not focused on a proposal's significance to the company's business. As a result, the Division's analysis has been similar to its analysis prior to 1983, with which the Commission expressed concern.

That analysis simply considered whether a company conducted any amount of business related to the issue in the proposal and whether that issue was of broad social or ethical concern. We believe the Division's application of Rule 14a-8(i)(5) has unduly limited the exclusion's availability because it has not fully considered the second prong of the rule as amended in 1982 – the question of whether the proposal "deals with a matter that is not significantly related to the issuer's business" and is therefore excludable. Accordingly, going forward, the Division's analysis will focus, as the rule directs, on a proposal's significance to the company's business when it otherwise relates to operations that account for less than 5% of total assets, net earnings and gross sales. Under this framework, proposals that raise issues of social or ethical significance may be included or excluded, notwithstanding their importance in the abstract, based on the application and analysis of each of the factors of Rule 14a-8(i)(5) in determining the proposal's relevance to the company's business.

Because the test only allows exclusion when the matter is not "otherwise significantly related to the company," we view the analysis as dependent upon the particular circumstances of the company to which the proposal is submitted. That is, a matter significant to one company may not be significant to another. On the other hand, we would generally view substantive governance matters to be significantly related to almost all companies.

Where a proposal's significance to a company's business is not apparent on its face, a proposal may be excludable unless the proponent demonstrates that it is "otherwise significantly related to the company's business."[8] For example, the proponent can provide information demonstrating that the proposal "may have a significant impact on other segments of the issuer's business or subject the issuer to significant contingent liabilities."[9] The proponent could continue to raise social or ethical issues in its arguments,

but it would need to tie those to a significant effect on the company's business. The mere possibility of reputational or economic harm will not preclude no-action relief. In evaluating significance, the staff will consider the proposal in light of the "total mix" of information about the issuer.

As with the "ordinary business" exception in Rule 14a-8(i)(7), determining whether a proposal is "otherwise significantly related to the company's business" can raise difficult judgment calls. Similarly, we believe that the board of directors is generally in a better position to determine these matters in the first instance. A board acting with the knowledge of the company's business and the implications for a particular proposal on that company's business is better situated than the staff to determine whether a particular proposal is "otherwise significantly related to the company's business." Accordingly, we would expect a company's Rule 14a-8(i)(5) no-action request to include a discussion that reflects the board's analysis of the proposal's significance to the company. That explanation would be most helpful if it detailed the specific processes employed by the board to ensure that its conclusions are well-informed and well-reasoned.

In addition, the Division's analysis of whether a proposal is "otherwise significantly related" under Rule 14a-8(i)(5) has historically been informed by its analysis under the "ordinary business" exception, Rule 14a-8(i)(7). As a result, the availability or unavailability of Rule 14a-8(i)(7) has been largely determinative of the availability or unavailability of Rule 14a-8(i)(5). Going forward, the Division will no longer look to its analysis under Rule 14a-8(i)(7) when evaluating arguments under Rule 14a-8(i)(5). In our view, applying separate analytical frameworks will ensure that each basis for exclusion serves its intended purpose.

We believe the approach going forward is more appropriately rooted in the intended purpose and language of Rule 14a-8(i)(5), and better helps companies, proponents and the staff determine whether a proposal is "otherwise significantly related to the company's business."

D. Proposals submitted on behalf of shareholders

While Rule 14a-8 does not address shareholders' ability to submit proposals through a representative, shareholders frequently elect to do so, a practice commonly referred to as "proposal by proxy." The Division has been, and continues to be, of the view that a shareholder's submission by proxy is consistent with Rule 14a-8.[10]

The Division is nevertheless mindful of challenges and concerns that proposals by proxy may present. For example, there may be questions about whether the eligibility requirements of Rule 14a-8(b) have been satisfied. There have also been concerns raised that shareholders may not know that proposals are being submitted on their behalf. In light of these challenges and concerns, and to help the staff and companies better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied, going forward, the staff will look to whether the shareholders who submit a proposal by proxy provide documentation describing the shareholder's delegation of authority to the proxy.[11] In general, we would expect this documentation to:

- identify the shareholder-proponent and the person or entity selected as proxy;
- identify the company to which the proposal is directed;
- identify the annual or special meeting for which the proposal is submitted;

- identify the specific proposal to be submitted (e.g., proposal to lower the threshold for calling a special meeting from 25% to 10%); and
- be signed and dated by the shareholder.

We believe this documentation will help alleviate concerns about proposals by proxy, and will also help companies and the staff better evaluate whether the eligibility requirements of Rule 14a-8(b) have been satisfied in connection with a proposal's submission by proxy. Where this information is not provided, there may be a basis to exclude the proposal under Rule 14a-8(b).[12]

E. Rule 14a-8(d)

1. Background

Rule 14a-8(d) is one of the procedural bases for exclusion of a shareholder proposal in Rule 14a-8. It provides that a "proposal, including any accompanying supporting statement, may not exceed 500 words."

2. The use of images in shareholder proposals

Questions have recently arisen concerning the application of Rule 14a-8(d) to proposals that include graphs and/or images.[13] In two recent no-action decisions,[14] the Division expressed the view that the use of "500 words" and absence of express reference to graphics or images in Rule 14a-8(d) do not prohibit the inclusion of graphs and/or images in proposals.[15] Just as companies include graphics that are not expressly permitted under the disclosure rules, the Division is of the view that Rule 14a-8(d) does not preclude shareholders from using graphics to convey information about their proposals.[16]

The Division recognizes the potential for abuse in this area. The Division believes, however, that these potential abuses can be addressed through other provisions of Rule 14a-8. For example, exclusion of graphs and/or images would be appropriate under Rule 14a-8(i)(3) where they:

- make the proposal materially false or misleading;
- render the proposal so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing it, would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires;
- directly or indirectly impugn character, integrity or personal reputation, or directly or indirectly make charges concerning improper, illegal, or immoral conduct or association, without factual foundation; or
- are irrelevant to a consideration of the subject matter of the proposal, such that there is a strong likelihood that a reasonable shareholder would be uncertain as to the matter on which he or she is being asked to vote.[17]

Exclusion would also be appropriate under Rule 14a-8(d) if the total number of words in a proposal, including words in the graphics, exceeds 500.

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[1] Release No. 34-40018 (May 21, 1998).

[2] Id.

[3] Id.

[4] See Staff Legal Bulletin No. 14H (Oct. 22, 2015), citing Staff Legal Bulletin No. 14E (Oct. 27, 2009) (stating that a proposal generally will not be excludable "as long as a sufficient nexus exists between the nature of the proposal and the company").

[5] Release No. 34-19135 (Oct. 14, 1982).

[6] Id.

[7] Release No. 34-20091 (Aug. 16, 1983).

[8] Proponents bear the burden of demonstrating that a proposal is "otherwise significantly related to the company's business." See Release No. 34-39093 (Sep. 18, 1997), citing Release No. 34-19135.

[9] Release No. 34-19135.

[10] We view a shareholder's ability to submit a proposal by proxy as largely a function of state agency law provided it is consistent with Rule 14a-8.

[11] This guidance applies only to proposals submitted by proxy after the date on which this staff legal bulletin is published.

[12] Companies that intend to seek exclusion under Rule 14a-8(b) based on a shareholder's failure to provide some or all of this information must notify the proponent of the specific defect(s) within 14 calendar days of receiving the proposal so that the proponent has an opportunity to cure the defect. See Rule 14a-8(f)(1).

[13] Rule 14a-8(d) is intended to limit the amount of space a shareholder proposal may occupy in a company's proxy statement. See Release No. 34-12999 (Nov. 22, 1976).

[14] General Electric Co. (Feb. 3, 2017, recon. granted Feb. 23, 2017); General Electric Co. (Feb. 23, 2016).

[15] These decisions were consistent with a longstanding Division position. See Ferrofluidics Corp. (Sep. 18, 1992).

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

[17] See General Electric Co. (Feb. 23, 2017).

http://www.sec.gov/interps/legal/cfslb14i.htm

Home | Previous Page Modified: 11/01/2017

Scott, Linda E

From: ***
Sent: Wednesday, December 06, 2017 4:35 PM
To: Carpenter, Molly
Cc: Scott, Linda E
Subject: SLB 14(I) (JPM)
Attachments: CCE06122017_8.pdf

Categories: EXTERNAL

SLB 14(I) (JPM)

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

Kenneth Steiner
***

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

Dear Mr. Horan,

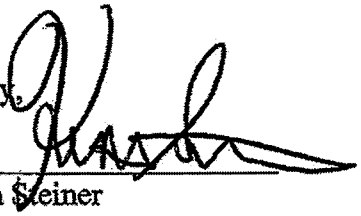
I purchased stock in our company because I believed our company had greater potential. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve compnay performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to
***

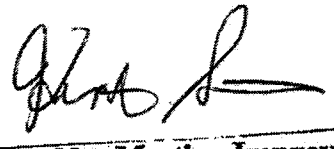
Sincerely,



Kenneth Steiner

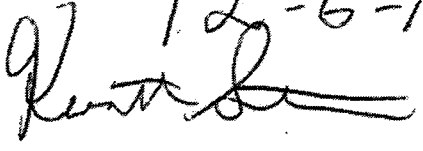
10-6-17
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>



Proposal [4] –Special Shareholder Meeting Improvement
FOR 2018 ANNUAL MEETING

12-6-17



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

Scott, Linda E

From:	***
Sent:	Wednesday, December 06, 2017 10:42 PM
To:	Carpenter, Molly
Cc:	Scott, Linda E
Subject:	Re: Rule 14a-8 Proposal (JPM)``
Attachments:	CCE06122017_11.pdf
Categories:	EXTERNAL

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

Kenneth Steiner
***

Mr. Anthony J. Horan
Corporate Secretary
JPMorgan Chase & Co. (JPM)
270 Park Ave.
38th Floor
New York NY 10017
PH: 212-270-6000

REVISED 6 DEC 2017

Dear Mr. Horan,

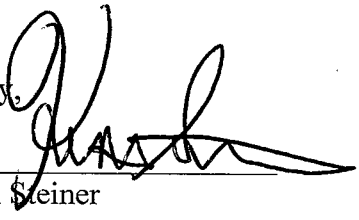
I purchased stock in our company because I believed our company had greater potential. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve compnay performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden
***

to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of my proposal promptly by email to ***

Sincerely,



Kenneth Steiner

10-6-17
Date

cc: Irma Caracciolo <caracciolo_irma@jpmorgan.com>
FX: 212-270-4240
FX: 646-534-2396
FX: 212-270-1648
Linda E. Scott <linda.e.scott@chase.com>

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

[JPM – Rule 14a-8 Proposal, November 21, 2017 | Revised Decmber 6, 2017]12-6
[This line and any line above it is not for publication.]

Proposal [4] –Special Shareholder Meeting Improvement

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

Scores of Fortune 500 companies allow a 10% of shares to call a special meeting compared to JPMorgan Chase's higher requirement. JPMorgan shareholders do not have the full right to call a special meeting that is available under state law.

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

This proposal topic also won 43% support at our 2017 annual meeting. This 43%-support would have been higher (possibility above 48%) if small shareholders had the same access to corporate governance information as large shareholders.

An enhanced ability of shareholders to call a special meeting would give shareholders greater standing to have input in improving the refreshment of our board of directors after the 2018 annual meeting. We had 5 directors who had more than 13-years long tenure. Long-tenure can impair the independence of a director no matter how well qualified.

There is concern about directors who joined the board relatively recently. Linda Bammann, who joined the JPM board in 2013, is not an independent director. Todd Combs who joined the board in 2016 did not have any director experience with a company of any size – and JPM has a market cap of $350 billion.

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

Kenneth Steiner, *** 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

JPMORGAN CHASE & CO.

BY-LAWS

OF

JPMORGAN CHASE & CO.

As amended by the Board of Directors
Effective October 4, 2017

Office of the Secretary
270 Park Avenue, 38th floor
New York, New York 10017

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BY-LAWS

OF

JPMORGAN CHASE & CO.

ARTICLE I

Meetings of Stockholders

Section 1.01. *Annual Meeting.* The annual meeting of the stockholders of JPMorgan Chase & Co. (the "Corporation") shall be held on the third Tuesday in May in each year (or, if that day shall be a legal holiday then on the next preceding business day) or at such other date and at such time and place, if any, within or without the State of Delaware, as may be specified in the notice thereof, as shall be fixed by the Board of Directors of the Corporation (the "Board"), for the purpose of electing directors and for the transaction of such other business as may properly be brought before such meeting. If any annual meeting shall not be held on the day designated or the directors shall not have been elected thereat or at any adjournment thereof, thereafter the Board shall cause a special meeting of the stockholders to be held as soon as practicable for the election of directors. At such special meeting the stockholders may elect directors and transact other business with the same force and effect as at an annual meeting of the stockholders duly called and held.

Section 1.02. Special Meetings.

(a) *General*. A special meeting of stockholders may be called at any time by the Board, the Chairman of the Board (herein called the "Chairman"), the Chief Executive Officer, the President or a Vice Chairman of the Board or otherwise as provided by the General Corporation Law of the State of Delaware (the "General Corporation Law"), the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") or these By-laws. Any such special meeting shall be held on such date and at such time and place, if any, designated by the Board. Subject to subsection (b) of this Section 1.02, a special meeting of stockholders shall be called by the Board upon the written request or requests of stockholders who are stockholders of record of the Corporation at the time a request is delivered holding shares representing in the aggregate at least twenty percent (20%) of the outstanding shares of common stock of the Corporation which shares are determined to be “Net Long Shares” in accordance with Section 1.02(b)(1) (the "Requisite Percent").

(b) Stockholder Requested Special Meetings.

(1) To be valid, the written request or requests for a special meeting of stockholders (each, a "Special Meeting Request" and, collectively, the "Special Meeting Requests") must be signed and dated by stockholders (or their duly authorized agents) representing the Requisite Percent and delivered to the Secretary of the Corporation (the "Secretary") and shall include: (i) a statement of the specific purpose or purposes of the special meeting and the matters proposed to be acted on at the special meeting, the text of any proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the By-laws of the Corporation, the text of the proposed amendment), the reasons for conducting such business at the special meeting, and any material interest in such business of the stockholders requesting the special meeting and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made; (ii) as to the stockholders requesting the special meeting and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made, the information required by clause (a)(3)(iii) of Section 1.09 of these By-laws to be set forth in a stockholder's notice required by Section 1.09(a)(2) and (3) of these By-laws; (iii) such other information, if applicable, required to be set forth in a stockholder's notice required by Section 1.09(a)(2) and (3) of these By-laws (including, but not limited to, such other information required to be set forth in connection with a stockholder's director nomination); (iv) an acknowledgement by the stockholders requesting the special meeting and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made that any reduction in the number of Net Long Shares with respect to which a Special Meeting Request relates following the delivery of such Special Meeting Request to the Secretary shall constitute a revocation of such Special Meeting Request to the extent of such reduction; and (v) documentary evidence that the stockholders requesting the special meeting own the Requisite Percent as of the date on which the Special Meeting Request(s) are delivered to the Secretary; provided, however, that if the stockholders are not the beneficial owners of the shares representing the Requisite Percent, then to be valid, the Special Meeting Request(s) must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request(s), such documentary evidence must be delivered to the Secretary within 10 days after the date on which the Special Meeting Request(s) are delivered to the Secretary) that the

beneficial owners on whose behalf the Special Meeting Request(s) are made beneficially own the Requisite Percent as of the date on which such Special Meeting Request(s) are delivered to the Secretary. For purposes of this Section 1.02 and for determining the Requisite Percent, Net Long Shares shall be limited to the number of shares beneficially owned, directly or indirectly, by any stockholder or beneficial owner that constitute such person's net long position as defined in Rule 14e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") provided that for purposes of such definition the date the tender offer is first announced shall instead be the date for determining a stockholder's or beneficial owner's Net Long Shares and the reference to the highest tender price shall refer to the market price on such date) and, to the extent not covered by such definition, reduced by any shares as to which such person does not have the right to vote or direct the vote at the Special Meeting or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. In addition, to the extent any affiliates of the stockholder or beneficial owner are acting in concert with the stockholder or beneficial owner with respect to the calling of the special meeting, the determination of Net Long Shares may include the effect of aggregating the Net Long Shares (including any negative number) of such affiliate or affiliates. Whether shares constitute "Net Long Shares" shall be decided by the Board in its reasonable determination. In addition, the stockholders requesting a special meeting of stockholders and the beneficial owners, if any, on whose behalf the Special Meeting Request(s) are being made shall promptly provide any other information reasonably requested by the Corporation and, if requested by the Corporation on or prior to the record date for the meeting, the information required under clause (b)(1)(ii), (iii), (iv) and (v) of this Section 1.02 shall be supplemented by such stockholders and beneficial owners not later than 10 days after the record date for the meeting to disclose such information as of the record date (and with respect to the information required under clause (b)(1)(v) of this Section 1.02, as of a date not more than 5 business days before the scheduled date of the special meeting to which the Special Meeting Request relates). In determining whether a special meeting of stockholders has been requested by stockholders of Net Long Shares representing in the aggregate at least the Requisite Percent, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) 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 in good faith by the Board), and (ii) such Special Meeting Requests have been dated and delivered to the Secretary within 60 days of the earliest dated Special Meeting Request. A stockholder may revoke a Special Meeting Request at any time prior to the special meeting by written revocation delivered to the Secretary. If at any point after 60 days following the earliest dated Special Meeting Request the unrevoked (whether by specific written revocation by the stockholder or pursuant to clause (b)(1)(iv)) valid Special Meeting Requests represent in the aggregate less than the Requisite Percent, there shall be no requirement to hold a Special Meeting.

(2) Except as provided in the next sentence, a special meeting validly requested by stockholders shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than 90 days after the Special Meeting Request is delivered to the Secretary. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if (i) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) the Special Meeting Request is delivered during the period commencing 90 days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 calendar days after the first anniversary of the date of the immediately preceding annual meeting, (iii) an identical or substantially similar item (as determined in good faith by the Board, a "Similar Item"), other than the election of directors, was presented at a meeting of the stockholders held not more than 12 months before the Special Meeting Request is delivered, (iv) a Similar Item was presented at a meeting of the stockholders held not more than 90 days before the Special Meeting Request is delivered (and, for purposes of this clause (iv), the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors) or (v) a Similar Item is included in the Corporation’s notice as an item of business to be brought before a stockholder meeting that has been called by the time the Special Meeting Request is delivered but not yet held. For purposes of this clause (2), the date of delivery of the Special Meeting

Request shall be the first date on which valid Special Meeting Requests constituting the Requisite Percent have been delivered to the Corporation.

(3) Business transacted at a special meeting requested by stockholders shall be limited to the purpose or purposes stated in the Special Meeting Request(s) for such special meeting; provided, however, that nothing herein shall prohibit the Board from submitting additional matters to stockholders at any such special meeting.

Section 1.03. *Notice of Meetings.* Except as may otherwise expressly be required by law, the Certificate of Incorporation or these By-laws, notice of the place, if any (or the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person), date and hour of holding each annual and special meeting of the stockholders and, in the case of a special meeting, the purpose or purposes thereof shall be delivered personally or mailed in a postage prepaid envelope or, to the extent and in the manner permitted by applicable law, by any form of electronic transmission (with the consent of the stockholder to the extent required by applicable law), not less than 10 nor more than 60 days before the date of such meeting, to each person who appears on the stock books and records of the Corporation as a stockholder entitled to vote at such meeting. Notices are deemed given (i) if by mail, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation, or, if a stockholder shall have filed with the Secretary a written request that notices to such stockholder be mailed to some other address, then directed to such stockholder at such other address; (ii) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (iii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive such notice; (iv) if by posting on an electronic network together with a separate notice to the stockholder of such specific posting, upon the later to occur of (A) such posting and (B) the giving of such separate notice of such posting; and (v) if by any other form of electronic transmission, when directed to the stockholder as required by law and, to the extent required by applicable law, in the manner consented to by the stockholder. An affidavit of the mailing or other means of giving any notice of any stockholders' meeting, executed by the Secretary, Assistant Corporate Secretary or any transfer agent of the Corporation giving the notice, shall be prima facie evidence of the giving of such notice or report. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the “householding” rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the General Corporation Law. Notice of any meeting of stockholders shall not be required to be given to any stockholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to

the transaction of any business because the meeting has not been lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice or waive notice by electronic transmission, in person or by proxy. Unless the Board shall fix a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place, if any (and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person at such adjourned meeting), to which the meeting shall be adjourned were announced at the meeting at which the adjournment was taken, provided that the adjournment is not for more than 30 days.

Section 1.04. *Quorum.* At each meeting of the stockholders, stockholders holding of record shares of common stock constituting a majority of the voting power of stock of the Corporation having voting power (shares having such voting power being hereinafter sometimes referred to as a "voting interest of the stockholders") shall be present in person or by proxy to constitute a quorum for the transaction of business. In the absence of a quorum at any such meeting or any adjournment or adjournments thereof, a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat, or any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting from time to time. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting as originally called. The absence from any meeting of stockholders holding the number of shares of stock of the Corporation required by the General Corporation Law, the Certificate of Incorporation or these By-laws for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if there shall be present thereat in person or by proxy stockholders holding the number of shares of stock of the Corporation required in respect of such other matter or matters.

Section 1.05. *Organization.* At each meeting of the stockholders, the Chairman, or, if he shall be absent therefrom, the Chief Executive Officer, the President, or a Vice Chairman of the Board, or, if they also shall be absent therefrom, another officer of the Corporation chosen as chairman of such meeting by a majority in voting interest of the stockholders present in person or by proxy and entitled to vote thereat, or, if all the officers of the Corporation shall be absent therefrom, a stockholder holding of record shares of stock of the Corporation so chosen, shall act as chairman of the meeting and preside thereat; and the Secretary, or, if he shall be absent from such meeting or shall be required pursuant to the provisions of this Section to act as chairman of such meeting, the person (who shall be an Assistant Corporate Secretary, if an Assistant Corporate Secretary shall be present thereat) whom the chairman of such meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

Section 1.06. *Voting.* Except as otherwise provided in the Certificate of Incorporation, each stockholder shall, at each meeting of the stockholders, be entitled to one vote in person or by proxy for each share of stock of the Corporation held by him and registered in his name on the stock books and records of the Corporation:

(a) on the date fixed pursuant to the provisions of Article VI, Section 6.05 of these By-laws as the record date for the determination of stockholders who shall be entitled to notice of and to vote at such meeting, or

(b) if no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice of the meeting shall be given.

Persons holding in a fiduciary capacity stock of the Corporation shall be entitled to vote such stock so held, and persons whose stock is pledged shall be entitled to vote such stock, unless in the transfer by the pledgor on the books of the Corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. If shares of stock of the Corporation shall stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety or otherwise, or if two or more persons shall have the same fiduciary relationship respecting the same shares of stock of the Corporation, unless the Secretary shall have been given written notice to the contrary and have been furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(c) if only one shall vote, his act shall bind all;

(d) if more than one shall vote, the act of the majority so voting shall bind all; and

(e) if more than one shall vote, but the vote shall be evenly split on any particular matter, then, except as otherwise required by the General Corporation Law, each faction may vote the shares in question proportionally.

If the instrument so filed shall show that any such tenancy is held in unequal interests, the majority or even-split for the purpose of the next foregoing sentence shall be a majority or even-split in interest. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram,

cablegram, or other means of electronic transmission to the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram, or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. Any copy, facsimile telecommunication or other reliable reproduction of such writing or transmission may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that any such reproduction is a complete reproduction of the entire original writing or transmission. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date. At all meetings of the stockholders at which a quorum is present, all matters, unless a different or minimum vote is required by the Certificate of Incorporation, these By-laws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities in which case such different or minimum vote shall be the applicable vote on the matter, shall be decided by the vote of a majority in voting interest of the stockholders present in person or by proxy and entitled to vote on such matter. For purposes of this By-law, votes cast "for" or "against" and "abstentions" with respect to a given matter shall be counted as shares of stock of the Corporation entitled to vote on such matter, while "broker nonvotes" (or other shares of stock of the Corporation similarly not entitled to vote) shall not be counted as shares entitled to vote on such matter. Except in the case of votes for the election of directors, unless demanded by a stockholder of the Corporation present in person or by proxy at any meeting of the stockholders and entitled to vote thereat or so directed by the chairman of the meeting, the vote thereat need not be by ballot. Upon a demand of any such stockholder for a vote by ballot on any question or at the direction of such chairman that a vote by ballot be taken on any question, such vote shall be taken. On a vote by ballot each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

Section 1.07. *List of Stockholders.* The Corporation shall prepare and make, at least 10 days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, 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, for a period of at least 10 days prior to said meeting, either (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting, or (ii) during

ordinary business hours at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of said meeting during the whole time thereof, and may be inspected by any stockholder who shall be present thereat. Upon the willful neglect or refusal of the directors to produce such list at any meeting for the election of directors, they shall be ineligible for election to any office at such meeting. Except as otherwise provided by law, the stock books and records shall be the only evidence as to who are the stockholders entitled to examine the stock books and records of the Corporation, or such list, or to vote in person or by proxy at any meeting of stockholders.

Section 1.08. *Inspectors.* Prior to any meeting of the stockholders, the chairman of such meeting shall appoint one or more Inspectors to act thereat and make a written report thereof. Each Inspector so appointed shall first subscribe an oath or affirmation faithfully to execute the duties of an Inspector at such meeting with strict impartiality and according to the best of his ability. Such Inspectors shall have the powers and duties set forth in Section 231 of the General Corporation Law as currently in effect or as the same may hereafter be amended or replaced. Such Inspectors, if any, shall take charge of the ballots at such meeting and after the balloting thereat on any question shall count the ballots cast thereon and shall make a report in writing to the secretary of such meeting of the results thereof. An Inspector need not be a stockholder of the Corporation. The Board may also designate Inspectors with respect to written consents received by the Corporation purporting to take or authorize the taking of corporation action as provided by, and in accordance with, the Certificate of Incorporation.

Section 1.09. *Notice of Stockholder Business and Director Nominations.*

(a) Business and Director Nominations to be Considered at Annual Meeting of Stockholders.

(1) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto) for such annual meeting, (ii) by or at the direction of the Board, (iii) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 1.09 is delivered to the Secretary, who is entitled to vote at such annual meeting and who complies with the notice procedures set forth in this Section 1.09, or (iv) in the case of stockholder nominations to be included in the Corporation’s proxy statement for such

annual meeting, by any Eligible Holder (as defined in Section 1.10 of these By-laws) who satisfies the requirements set forth in Section 1.10 of these By-laws.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 1.09, (i) the stockholder must have given timely notice thereof in writing to the Secretary and (ii) such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal offices of the Corporation not later than the close of business on the 90th day nor earlier than the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) The stockholder’s notice referenced in paragraph (a)(2) of this Section 1.09 shall set forth (i) as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act and/or Rule 14a-11 (as if such rule were still in effect) thereunder (including such person’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the By-laws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and

the beneficial owner, if any, on whose behalf the proposal is made; (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (B) the class and number of shares of capital stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (C) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (D) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, (E) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (F) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination. If requested by the Corporation, the information required under clauses (a)(3)(iii)(B), (C) and (D) of this Section 1.09 shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such information as of the record date.

(4) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 1.09 to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by the Corporation naming the nominees for the additional directorships or specifying the size of the increased Board at least 90 days prior to the first anniversary of the preceding year's annual

meeting, a stockholder's notice required by this Section 1.09 shall also be considered timely, but only with respect to nominees for the additional directorships created by such increase, if it shall be delivered to the Secretary at the principal offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(5) For nominations to be properly brought before an annual meeting by a stockholder pursuant to clause (iv) of paragraph (a)(1) of this Section 1.09, the stockholder must have given timely notice thereof in writing to the Secretary in accordance with paragraph (d) of Section 1.10 of these By-laws and satisfy all other requirements of Section 1.10 of these By-laws.

(b) Business and Director Nominations to be Considered at Special Meetings of Stockholders.

(1) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting.

(2) Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board or stockholders pursuant to Section 1.02(b) hereof; or (ii) provided that the Board or stockholders pursuant to Section 1.02(b) hereof has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (A) is a stockholder of record at the time the notice provided for in this Section 1.09 is delivered to the Secretary, (B) shall be entitled to vote at the meeting, and (C) complies with the notice procedures set forth in this Section 1.09. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more persons to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraphs (a)(2) and (a)(3) of this Section 1.09 shall be delivered to the Secretary at the principal offices of the Corporation not earlier than the 90th day prior to such special meeting, and not later than the close of business on the later of the 60th day and prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the

special meeting and of the nominees proposed by the Board for election at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.09 or in Section 1.10 of these By-laws (or who are elected or appointed to the Board pursuant to Article II, Section 2.02 of these By-laws) shall be eligible to serve as directors of the Corporation and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.09.

(2) Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.09 or Section 1.10 of these By-laws (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(3)(iii)(F) of this Section 1.09, and whether the stockholder or beneficial owner, if any, provided the supplemental information required by the last sentence of clause (a)(3) of this Section 1.09) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.09 or Section 1.10 of these By-laws, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.09 and the provisions of Section 1.10 in these By-laws, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of

this Section 1.09 and Section 1.10 of these By-laws, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(3) For purposes of this Section 1.09, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission ("SEC") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(4) Notwithstanding the foregoing provisions of this Section 1.09, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.09 and Section 1.10 of these By-laws. Nothing in this Section 1.09 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act (or any successor rule) or (ii) of the holders of any series of preferred stock to elect directors pursuant to applicable provisions of the Certificate of Incorporation.

(5) For purposes of this Section 1.09, any reference to the Board shall include any properly constituted committee thereof, to the fullest extent permitted by law.

Section 1.10. *Stockholder Nominations Included in the Corporation's Proxy Materials.*

(a) Inclusion of Nominees in Proxy Statement. Subject to the provisions of this Section 1.10, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(1) the names of any person or persons nominated for election, which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board, all applicable conditions and complied with all applicable procedures set forth in this Section 1.10 (such Eligible Holder or group of Eligible Holders being a "Nominating Stockholder" and each person so nominated, a "Nominee");

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

(3) any statement in support of the Nominee's (or Nominees', as applicable) election to the Board included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement (subject, without limitation, to Section 1.10(e)(2)), provided that such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "Statement"); and

(4) any other information that the Corporation or the Board determines, in their discretion, to include in the proxy statement relating to the nomination of the Nominee(s), including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section 1.10 and any solicitation materials or related information with respect to the Nominees(s).

For purposes of this Section 1.10, any determination to be made by the Board may be made by the Board, a committee of the Board or any officer of the Corporation designated by the Board or a committee of the Board, and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Stockholder, any Nominee and any other person so long as made in good faith (without any further requirements).

(b) Maximum Number of Nominees.

(1) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of directors constituting the greater of (i) two and (ii) 20% of the total

number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 1.10 (rounded down to the nearest whole number) (the "Maximum Number"). The Maximum Number for a particular annual meeting of stockholders shall be reduced by: (i) the number of Nominees who are subsequently withdrawn or that the Board itself decides to nominate for election at such annual meeting of stockholders and (ii) the number of incumbent directors who had been Nominees with respect to any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting of stockholders is being recommended by the Board. In the event that one or more vacancies for any reason occurs on the Board after the deadline for submitting a Nomination Notice as set forth in Section 1.10(d) below but before the date of the Corporation's applicable annual meeting of stockholders, and the Board resolves to reduce the size of the Board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(2) If the number of Nominees pursuant to this Section 1.10 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 1.10(d), a Nominating Stockholder ceases to satisfy the eligibility requirements in this Section 1.10, as determined by the Board, or withdraws its nomination or a Nominee ceases to satisfy the eligibility requirements in this Section 1.10, as determined by the Board, or becomes unwilling or unable to serve on the Board, whether before or after the mailing of the Corporation's proxy statement for such annual meeting of stockholders, then the nomination shall be disregarded, and the Corporation: (i) shall not be required to include in its proxy statement for such annual meeting of stockholders or on any ballot or form of proxy for such annual meeting of stockholders the disregarded Nominee or any successor or replacement nominee proposed by the applicable Nominating Stockholder or by any other Nominating Stockholder and (ii) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of

proxy, that the Nominee will not be included as a Nominee in the proxy statement or on any ballot or form of proxy for such annual meeting of stockholders and will not be voted on at such annual meeting of stockholders.

(c) Eligibility of Nominating Stockholder.

(1) An "Eligible Holder" is a person who has either (i) been a record holder of the shares of the Corporation's common stock used to satisfy the eligibility requirements in this Section 1.10(c) continuously for the three-year period specified in Subsection (2) below or (ii) provides to the Secretary of the Corporation, within the time period referred to in Section 1.10(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(2) An Eligible Holder or group of up to 20 Eligible Holders may submit a nomination in accordance with this Section 1.10 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of such shares through the date of the Corporation's applicable annual meeting of stockholders. Two or more funds or accounts that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer (or by a group of related employers that are under common control) or (iii) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Board that demonstrates the satisfaction of any of the foregoing criteria. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 1.10, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any

stockholder cease to satisfy the eligibility requirements in this Section 1.10, as determined by the Board, or withdraw from a group of Eligible Holders at any time prior to the applicable annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group. As used in this Section 1.10, any reference to a "group" or "group of Eligible Holders" refers to any Nominating Stockholder that consists of more than one Eligible Holder and to all the Eligible Holders that make up such Nominating Stockholder.

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

(4) For purposes of this Section 1.10, an Eligible Holder "owns" only those outstanding shares of the Corporation as to which the Eligible Holder 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 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 Eligible Holder or any of its affiliates in any transaction that has not yet been settled or closed, (B) purchased by such Eligible Holder or any of its affiliates in a transaction that has not yet been settled or closed, (C) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (D) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates. An Eligible Holder "owns" shares

held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on not more than five business days' notice and has recalled such loaned shares as of (i) the record date for the Corporation's applicable annual meeting of stockholders and (ii) the date of the Corporation's applicable annual meeting of stockholders (it being understood that the Eligible Holder shall be entitled to loan such shares during the period that falls between the dates referenced in clauses (i) and (ii)). The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board.

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

(d) Nomination Notice. To nominate a Nominee, the Nominating Stockholder must, no earlier than 150 calendar days and no later than the close of business 120 calendar days before the anniversary of the date that the Corporation mailed its proxy statement for the prior year's annual meeting of stockholders, submit to the Secretary of the Corporation at the principal executive office of the Corporation all of the following information and documents (collectively, the "Nomination Notice"); provided, however, that if (and only if) the applicable annual meeting of stockholders is not scheduled to be held within a period that commences 30 days before such anniversary date and ends 30 days after such anniversary date (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), the Nomination Notice shall be given in the manner provided in this Section 1.10(d) by the later of the close of business on the date that is 180

days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed:

(1) a Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the SEC by the Nominating Stockholder as applicable, in accordance with SEC rules;

(2) a written notice, in a form deemed satisfactory by the Board, of the nomination of such Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, in the case of a group, each Eligible Holder included in the group):

(i) the information required with respect to the nomination of directors pursuant to Section 1.09(a)(3)(i) and (iii)(A)-(E) of these By-laws;

(ii) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(iii) a representation and warranty that the Nominating Stockholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(iv) a representation and warranty that the Nominee's candidacy or, if elected, membership on the Board would not violate applicable state or federal law or the rules of the principal national securities exchange on which the Corporation's shares of common stock are traded;

(v) a representation and warranty that the Nominee: (A) does not have any direct or indirect relationship with the Corporation that will cause the Nominee to be deemed not independent pursuant to the Corporation's Corporate Governance Principles as most recently published on its website and otherwise qualifies as independent under the rules of the principal national securities exchange on which the Corporation's shares of common stock are traded; (B)

meets the audit committee independence requirements under the rules of the principal national securities exchange on which the Corporation's shares of common stock are traded; (C) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (D) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); and (E) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Nominee;

(vi) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 1.10(c) and has provided evidence of ownership to the extent required by Section 1.10(c)(1);

(vii) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 1.10(c) through the date of the applicable annual meeting of stockholders;

(viii) a statement as to the Nominating Stockholder's intentions with respect to maintaining qualifying ownership of the Minimum Number of shares for at least one year following the applicable annual meeting of stockholders;

(ix) details of any position of the Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three years preceding the submission of the Nomination Notice;

(x) details of any shares of the Corporation owned by the Nominee that are (A) pledged by the Nominee or otherwise subject to a lien, charge or other encumbrance or (B) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Nominee, whether any such

instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such Nominee's full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Nominee;

(xi) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election to the Board at the applicable annual meeting of stockholders any person other than its Nominee(s);

(xii) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting of stockholders, other than its Nominee(s) or any nominee of the Board;

(xiii) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a director of the Corporation at the applicable annual meeting of stockholders;

(xiv) if desired, a Statement; and

(xv) in the case of a nomination by a group, the designation by all Eligible Holders included in the group of one such Eligible Holder that is authorized to act on behalf of all Eligible Holders included in the group with respect to matters relating to the nomination, including withdrawal of the nomination;

(3) an executed agreement, in a form deemed satisfactory by the Board, pursuant to which the Nominating Stockholder (in the case of a group,

including, and binding upon, each Eligible Holder included in the group) agrees:

(i) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election of a Nominee;

(ii) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the SEC, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(iii) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of one or more of the Corporation's directors, including, without limitation, the Nomination Notice;

(iv) to indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Nominees to comply with, or any breach or alleged breach of, its respective obligations, agreements or representations under this Section 1.10; and

(v) in the event that (A) any information included in the Nomination Notice or in any other communication by the Nominating Stockholder (including with respect to any Eligible Holder included in a group), any of its Nominees or any of their respective agents or representatives with the Corporation, its stockholders or any other person in connection with the nomination or election of a Nominee ceases to be true and accurate in all material respects (or

omits a material fact necessary to make the statements made not misleading) or (B) the Nominating Stockholder (including any Eligible Holder included in a group) has failed to continue to satisfy the eligibility requirements described in Section 1.10(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify the Corporation and, in the case of clause (A), any other recipient of such communication (together with the information required to correct the misstatement or omission); and

(4) an executed agreement, in a form deemed satisfactory by the Board, by the Nominee:

(i) to provide to the Corporation such other information, including completion of the Corporation's director questionnaire, as it may reasonably request;

(ii) that the Nominee has read and agrees, if elected, to adhere to the Corporation's Corporate Governance Principles and Code of Conduct and any other Corporation policies and guidelines applicable to directors, in each case as in effect from time to time (including, but not limited to, any provision therein requiring a director to offer his or her resignation in specified circumstances); and

(iii) that the Nominee is not and will not become a party to (A) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation, (B) any agreement, arrangement or understanding with any person or entity as to how the Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation or (C) any Voting Commitment that could reasonably be expected to limit or interfere with the Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

(5) an irrevocable letter of resignation, in a form deemed satisfactory by the Board, executed by the Nominee in advance of the Corporation's

applicable annual meeting of stockholders resigning his or her candidacy for director election and, if applicable at the time the determination set forth in either of clauses (i) and (ii) below is made by the Board, resigning from his or her position as a director, which shall in each case become effective upon a determination by the Board that (i) the information provided to the Corporation with respect to such Nominee pursuant to this Section 1.10 was untrue in any material respect or omitted 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 or (ii) that such Nominee, or the Nominating Stockholder who nominated such Nominee, committed a material violation or breach of any obligation, agreement, representation or warranty of such Nominee or Nominating Stockholder under this Section 1.10; provided that such resignation letter shall expire upon the certification of the voting results of the Corporation's applicable annual meeting of stockholders.

The information and documents required by this Section 1.10(d) to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each Eligible Holder, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Item 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or Eligible Holder included in a group that is an entity. The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 1.10(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) Exceptions.

(1) Notwithstanding anything to the contrary contained in this Section 1.10, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Stockholder's Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if:

(i) the Corporation receives a notice, whether or not subsequently withdrawn, pursuant to Section 1.09(a)(2) of these By-laws that a stockholder intends to nominate a candidate for director at the applicable annual meeting of stockholders;

(ii) another person is engaging in a "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 applicable annual meeting of stockholders other than a nominee of the Board and other than as permitted by this Section 1.10;

(iii) the Nominating Stockholder or the Eligible Holder that is designated to act on behalf of a group of Eligible Holders, as applicable, or any qualified representative thereof, does not appear at the applicable annual meeting of stockholders to present the nomination submitted pursuant to this Section 1.10, the Nominating Stockholder withdraws its nomination or the chairman of the meeting declares that such nomination shall be disregarded pursuant to Section 1.09(c)(2) of these By-laws;

(iv) the Board of Directors determines that such Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the principal national securities exchange on which the Corporation's shares of common stock are traded;

(v) the Nominee was nominated for election to the Board pursuant to this Section 1.10 at one of the Corporation's two preceding annual meetings of stockholders and either (A) withdrew or became ineligible or (B) received a vote of less than 20% of the Corporation's shares of common stock entitled to vote for such Nominee;

(vi) (A) the Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended, (B) the Nominee's election as a member of the Board would cause the Corporation to seek, or assist in the seeking of, advance approval or to obtain, or

assist in the obtaining of, an interlock waiver pursuant to the rules or regulations of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency or the Federal Energy Regulatory Commission or (C) the Nominee is a director, trustee, officer or employee with management functions for any depository institution, depository institution holding company or entity that has been designated as a Systemically Important Financial Institution, each as defined in the Depository Institution Management Interlocks Act, provided, however, that this clause (C) shall apply only so long as the Corporation is subject to compliance with Section 164 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (or any successor provision thereto); or

(vii) the Corporation is notified, or the Board determines, that a Nominating Stockholder or such Nominee has failed to continue to satisfy the eligibility requirements described in this Section 1.10, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), the Nominee becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Nominee under this Section 1.10.

(2) Notwithstanding anything to the contrary contained in this Section 1.10, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Nominee(s) included in the Nomination Notice, if the Board determines that:

(i) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(ii) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to any person; or

(iii) the inclusion of such information in the proxy statement would otherwise violate the SEC proxy rules or any other applicable law, rule or regulation.

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

Section 1.11. *Conduct of Meetings*. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.12. *Action Without Meeting.* Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders or may be effected by a consent in writing by stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation.

ARTICLE II

Board of Directors

Section 2.01. *Number.* The business and affairs of the Corporation shall be managed by or under the direction of a Board consisting of not less than 8 and no more than 18 members, selected, organized and continued in accordance with the provisions of the laws of the State of Delaware. The exact number of directors within said range shall be determined from time to time by resolution adopted by the Board, except as the number of Directors for any year may be fixed by resolution of the stockholders at any annual meeting by a majority vote of the outstanding shares entitled to vote thereon; provided, however, that no vote to decrease the number of directors of the Corporation shall shorten the term of any incumbent director. Each director hereafter elected shall hold office until the annual meeting of stockholders and until such director's successor is duly elected and qualified or until such director's earlier death, resignation, disqualification or removal.

Section 2.02. *Vacancies.* Except as otherwise provided by the Certificate of Incorporation or these By-laws, vacancies on the Board due to death, resignation, removal, disqualification or any other cause, and newly created directorships resulting from any increase in the authorized number of directors shall be filled by a majority of the directors then in office, although less than a quorum. Each director so chosen shall hold office until the next annual meeting of stockholders and until a successor is duly elected and qualified or until such director's earlier death, resignation, disqualification or removal.

Section 2.03. *Annual Meeting.* An annual meeting of the directors shall be held each year, without notice, immediately following the annual meeting of stockholders. The time and place of such meeting shall be designated by the Board. At such meeting, the directors shall, after qualifying, elect from their own number a Chairman of the Board, a Chief Executive Officer, a President and one or more Vice Chairmen of the Board, and when the positions of Chairman of the Board and Chief Executive Officer are held by the same person, the independent directors shall appoint a Lead Independent Director with such duties as from time to time may be prescribed by the Board. The directors also shall elect or appoint such other officers authorized by these By-laws as they may deem desirable, and designate the Committees specified in Article III hereof. The directors may also elect to serve at the pleasure of the Board, one or more Honorary Directors, not members of the Board. Honorary Directors of the Board shall be paid such compensation or such fees for attendance at meetings of the Board, and

meetings of other committees of the Board, as the Board shall determine from time to time.

Section 2.04. *Regular Meetings.* The Board shall hold a regular meeting without notice at the principal office of the Corporation on the third Tuesday in each month, with such exceptions as shall be determined by the Board, at such time as shall be determined by the Board, unless another time or place, within or without the State of Delaware, shall be fixed by resolution of the Board. Should the day appointed for a regular meeting fall on a legal holiday, the meeting shall be held at the same time on the preceding day or on such other day as the Board may order.

Section 2.05. *Special Meetings.* Special meetings of the Board shall be held whenever called by the Chairman, the Lead Independent Director, the Chief Executive Officer, the President, a Vice Chairman of the Board, the Secretary or a majority of the directors then in office. A notice shall be given as hereinafter in this Section provided of each such special meeting, in which shall be stated the time and place (which may be within or without the State of Delaware) of such meeting, but, except as otherwise expressly provided by law or by these By-laws, the purposes thereof need not be stated in such notice. Except as otherwise provided by law, notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least 48 hours prior to the day on which such meeting is to be held; provided that in lieu thereof, notice may be delivered to each director personally or by telephone or sent by facsimile, electronic mail or other electronic transmission addressed to each director to the extent and in the manner permitted by applicable law not later than noon of the calendar day before the day on which such meeting is to be held. At any regular or special meeting of the Board, or any committee thereof, one or more Board or committee members may participate in and act at such meeting by means of a conference telephone or other communications equipment allowing all persons participating in the meeting to hear each other, and participation in the meeting pursuant to this By-law shall constitute presence in person at the meeting. Notice of any meeting of the Board shall not, however, be required to be given to any director who submits a signed waiver of notice, or waives notice of such meeting by electronic transmission, whether before or after the meeting, or if he shall be present at such meeting; and any meeting of the Board shall be a legal meeting without any notice thereof having been given if all the directors of the Corporation then in office shall be present thereat.

Section 2.06. *Quorum.* One-third of the members of the entire Board, or the next highest integer in the event of a fraction, shall constitute a quorum, but if less than a quorum be present, a majority of those present may adjourn any meeting from time to time and the meeting may be held as adjourned without further notice. The vote of a

majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law.

Section 2.07. *Rules and Regulations.* The Board may adopt such rules and regulations for the conduct of its meetings and the management of the affairs of the Corporation as it may deem proper, not inconsistent with the laws of the State of Delaware or these By-laws.

Section 2.08. *Compensation.* Directors shall be entitled to receive from the Corporation such amount per annum and in addition, or in lieu thereof, such fees for attendance at meetings of the Board or of any committee, or both, as the Board from time to time shall determine. The Board may also likewise provide that the Corporation shall reimburse each such director or member of such committee for any expenses paid by him on account of his attendance at any such meeting. Nothing contained in this Section shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 2.09. *Majority Voting for Directors***.** The vote required for election of a director by the stockholders shall, except in a contested election, be the affirmative vote of a majority of the votes cast in the election of a nominee at a meeting of stockholders. For purposes of this Section 2.09, a "majority of the votes cast" shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election, with "abstentions" and "broker nonvotes" (or other shares of stock of the Corporation similarly not entitled to vote on such election) not counted as votes cast either "for" or "against" that director's election. In a contested election, directors shall be elected by a plurality of the votes cast at a meeting of stockholders by the holders of shares present in person or by proxy at the meeting and entitled to vote in the election. An election shall be considered contested if there are more nominees for election than positions on the board of directors to be filled by election at the meeting.

In any non-contested election of directors, any incumbent director nominee who receives a greater number of votes cast against his or her election than in favor of his or her election shall immediately tender his or her resignation, and the Board shall decide, through a process managed by the Corporate Governance and Nominating Committee, whether to accept the resignation at its next regularly scheduled Board meeting held not less than 45 days after such election. The Board’s explanation of its decision shall be promptly disclosed through a public statement.

Section 2.10. *Action Without Meeting.* Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such consent or consents are filed with the minutes of the Board or of such committee.

ARTICLE III

Committees

Section 3.01. *Executive Committee*. The Board shall designate an Executive Committee which, when the Board is not in session, shall have and may exercise all the powers of the Board that lawfully may be delegated, including without limitation the power and authority to declare dividends. The Executive Committee shall consist of such number of directors as the Board shall from time to time determine, but not less than five and one of whom shall be designated by the Board as Chairman thereof, including: (a) the Chairman of the Board, the Chief Executive Officer, the President, the Vice Chairmen of the Board; and (b) such other directors, none of whom shall be an officer of the Corporation, as shall be appointed to serve at the pleasure of the Board. The Board, by resolution adopted by a majority of the entire Board, may (a) designate one or more directors as alternate members of the Executive Committee or (b) specify that the member or members of the Executive Committee present and not disqualified from voting at a meeting of the Executive Committee, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at such meeting in place of any absent or disqualified member. The attendance of one-third of the members of the Committee or their substitutes, or the next highest integer in the event of a fraction, at any meeting shall constitute a quorum, and the act of a majority of those present at a meeting thereof at which a quorum is present shall be the act of the Committee. All acts done and powers conferred by the Committee from time to time shall be deemed to be, and may be certified as being, done or conferred under authority of the Board. The Committee shall fix its own rules and procedures, and the minutes of the meetings of the Committee shall be submitted at the next regular meeting of the Board at which a quorum is present, or if impracticable, at the next such subsequent meeting. The Committee shall hold meetings “On Call” and such meetings may be called by the Chairman of the Executive Committee, the Chairman of the Board, the Chief Executive Officer, the President, a Vice Chairman of the Board, or the Secretary. Notice of each such meeting of the Committee shall be given by mail or courier or delivered personally or by telephone or sent by facsimile, electronic mail or other electronic transmission, to the extent and in the manner permitted by applicable law, to each member of the Committee not later than 24 hours before such meeting. Notice of any such meeting need

not be given to any member of the Committee who submits a signed waiver of notice or waives notice by electronic transmission, whether before or after the meeting, or if he shall be present at such meeting; and any meeting of the Committee shall be a legal meeting without any notice thereof having been given, if all the members of the Committee shall be present thereat. In the case of any meeting, in the absence of the Chairman of the Executive Committee, such member as shall be designated by the Chairman of the Executive Committee or the Executive Committee shall act as Chairman of the meeting.

Section 3.02. *Audit Committee.* The Board shall designate an Audit Committee composed of not less than three of its members, none of whom shall be an officer of the Corporation, to hold office at its pleasure and one of whom shall be designated by the Board as Chairman thereof. The Committee shall make such examination into the affairs of the Corporation and make such reports in writing thereof as may be directed by the Board. The attendance of one-third of the members of the Committee, or the next highest integer in the event of a fraction, at any meeting shall constitute a quorum, and the act of a majority of those present at a meeting thereof at which a quorum is present shall be the act of the Committee.

Section 3.03. *Other Committees.* The Corporation elects to be governed by subsection (2) of section 141(c) of the General Corporation Law. The Board may designate, from time to time, such other committees composed of not less than one of its members for such purposes and with such duties and powers as the Board may determine, and the board may designate a chair or co-chair for each committee. The attendance of one-third of the members of such other committees, or the next highest integer in the event of a fraction, at any meeting shall constitute a quorum, and the act of a majority of those present at a meeting thereof at which a quorum is present shall be the act of such other committees. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any committee may act by delegating its authority to one or more subcommittees. With respect to the rules and procedures of such other committees of the Board (including, but not limited to, the Audit Committee), the provisions in Section 3.01 shall apply to each such committee unless such committee shall elect otherwise.

ARTICLE IV

Officers and Agents

Section 4.01. *Officers.* The officers of the Corporation shall be (a) a Chairman of the Board, a Chief Executive Officer, and, in the discretion of the Board, a President and one or more Vice Chairmen of the Board, each of whom must be a director and shall be elected by the Board; (b) a Chief Financial Officer, a Controller, a Secretary, and a General Auditor, each of whom shall be elected by the Board; and (c) such other officers as may from time to time be elected by the Board or under its authority, or appointed by the Chairman, the Chief Executive Officer, the President or a Vice Chairman of the Board. The Board may determine that the Chairman of the Board is a non-executive position, in which case the second sentence of Section 4.04 of this Article IV shall not apply.

Section 4.02. *Clerks and Agents.* The Board may elect and dismiss, or the Chairman, the Chief Executive Officer, the President or a Vice Chairman of the Board may appoint and dismiss and delegate to any other officers authority to appoint and dismiss, such clerks, agents and employees as may be deemed advisable for the prompt and orderly transaction of the Corporation's business, and may prescribe, or authorize the appointing officers to prescribe, their respective duties, subject to the provisions of these By-laws.

Section 4.03. *Term of Office.* The officers designated in Section 4.01(a) shall be elected by the Board at its annual meeting, and any one person may be elected to hold more than one such office. The officers designated in Section 4.01(b) may be elected at the annual or any other meeting of the Board. The officers designated in Section 4.01(c) may be elected at the annual or any other meeting of the Board or appointed at any time by the designated proper officers. Any vacancy occurring in any office designated in Section 4.01(a) may be filled at any regular or special meeting of the Board. The officers elected pursuant to Section 4.01(a) shall each hold office for the term of one year and until their successors are elected, unless sooner disqualified or removed by a vote of two-thirds of the whole Board. All other officers, clerks, agents and employees elected by the Board, or appointed by the Chairman, the Chief Executive Officer, the President, or a Vice Chairman of the Board, or under their authority, shall hold their respective offices at the pleasure of the Board or officers elected pursuant to Section 4.01(a).

Section 4.04. *Chairman of the Board.* The Chairman shall preside at all meetings of the stockholders and at all meetings of the Board. The Chairman of the

Board shall have the same power to perform any act on behalf of the Corporation and to sign for the Corporation as is prescribed in these By-laws for the Chief Executive Officer. He shall perform such other duties as from time to time may be prescribed by the Board.

Section 4.05. *Chief Executive Officer.* The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have, subject to the control of the Board, general supervision and direction of the business and affairs of the Corporation and of its several officers. In the absence of the Chairman, he shall preside at all meetings of the stockholders and at all meetings of the Board. He shall have the power to execute any document or perform any act on behalf of the Corporation, including without limitation the power to sign checks, orders, contracts, leases, notes, drafts and other documents and instruments in connection with the business of the Corporation, and together with the Secretary or an Assistant Corporate Secretary execute conveyances of real estate and other documents and instruments to which the seal of the Corporation may be affixed. He shall perform such other duties as from time to time may be prescribed by the Board.

Section 4.06. *President.* The President shall, subject to the direction and control of the Board and the Chief Executive Officer, participate in the supervision of the business and affairs of the Corporation. In general, the President shall perform all duties incident to the office of President, and such other duties as from time to time may be prescribed by the Board or the Chief Executive Officer. In the absence of the Chairman and the Chief Executive Officer, the President shall preside at meetings of stockholders and of the Board. The President shall have the same power to perform any act on behalf of the Corporation and to sign for the Corporation as is prescribed in these By-laws for the Chief Executive Officer.

Section 4.07. *Vice Chairman of the Board.* The Vice Chairman of the Board, or if there be more than one, then each of them, shall, subject to the direction and control of the Board and the Chief Executive Officer, participate in the supervision of the business and affairs of the Corporation, and shall have such other duties as may be prescribed from time to time by the Board or the Chief Executive Officer. In the absence of the Chairman, the Chief Executive Officer and the President, a Vice Chairman, as designated by the Chairman or the Board, shall preside at meetings of the stockholders and of the Board. Each Vice Chairman shall have the same power to perform any act on behalf of the Corporation and to sign for the Corporation as is prescribed in these By-laws for the Chief Executive Officer.

Section 4.08. *Chief Financial Officer.* The Chief Financial Officer shall have such powers and perform such duties as the Board, the Chairman, the Chief

Executive Officer, the President or a Vice Chairman of the Board may from time to time prescribe which may include, without limitation, responsibility for strategic planning, corporate finance, control, tax and auditing and shall perform such other duties as may be prescribed by these By-laws.

Section 4.09. *Controller.* The Controller shall exercise general supervision of the accounting departments of the Corporation. He shall be responsible to the Chief Financial Officer and shall render reports from time to time relating to the general financial condition of the Corporation. He shall render such other reports and perform such other duties as from time to time may be prescribed by the Chief Financial Officer, a Vice Chairman of the Board, the President, the Chief Executive Officer, or the Chairman.

Section 4.10. *Secretary.* The Secretary shall:

(a) record all the proceedings of the meetings of the stockholders, the Board and the Executive Committee in one or more books kept for that purpose;

(b) see that all notices are duly given in accordance with the provisions of these By-laws or as required by law;

(c) be custodian of the seal of the Corporation; and he may see that such seal or a facsimile thereof is affixed to any documents the execution of which on behalf of the Corporation is duly authorized and may attest such seal when so affixed; and

(d) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be prescribed by the Board, the Chairman, the Chief Executive Officer, the President, or a Vice Chairman of the Board.

Section 4.11. *Assistant Corporate Secretary.* At the request of the Secretary, or in case of his absence or inability to act, the Assistant Corporate Secretary, or if there be more than one, any of the Assistant Corporate Secretaries, shall perform the duties of the Secretary and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Secretary. Each Assistant Corporate Secretary shall perform such other duties as from time to time may be prescribed by the Chairman, the Chief Executive Officer, the President, a Vice Chairman of the Board, or the Secretary.

Section 4.12. *General Auditor.* The General Auditor shall continuously examine the affairs of the Corporation. He shall have and may exercise such powers and duties as from time to time may be prescribed by the Board, the Chairman, the Chief

Executive Officer, the President, a Vice Chairman of the Board or the Chief Financial Officer.

Section 4.13. *Powers and Duties of Other Officers.* The powers and duties of all other officers of the Corporation shall be those usually pertaining to their respective offices, subject to the direction and control of the Board and as otherwise provided in these By-laws.

ARTICLE V

Proxies re Stock or Other Securities of Other Entities

Unless otherwise provided by the Board, the Chairman, the Chief Executive Officer, the President, a Vice Chairman of the Board, the Chief Financial Officer or the Secretary may from time to time (a) appoint an attorney or attorneys or an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other entity to vote or consent in respect of such stock or other securities; (b) instruct the person or persons so appointed as to the manner of exercising such powers and rights; and (c) execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as he may deem necessary or proper in order that the Corporation may exercise its said powers and rights.

ARTICLE VI

Shares and Their Transfer

Section 6.01. *Certificates for Stock; Uncertificated Shares*. The shares of all classes or series of the capital stock of the Corporation may be uncertificated shares, except to the extent otherwise required by applicable law and except to the extent shares are represented by outstanding certificates that have not been surrendered to the Corporation or its transfer agent. Notwithstanding the foregoing, every owner of stock of the Corporation of any class (or, if stock of any class shall be issuable in series, any series of such class) represented by certificates shall be entitled to have a certificate, in such form as the Board shall prescribe, certifying the number of shares of stock of the Corporation of such class, or such class and series, owned by him. The certificates representing shares of stock of each class (or, if there shall be more than one series of any class, each series of such class) shall be numbered in the order in which they shall be

issued and shall be signed in the name of the Corporation by two authorized officers thereof, including but not limited to, the Chairman, the Chief Executive Officer, the President, a Vice Chairman of the Board, the Secretary or an Assistant Corporate Secretary; provided, however, that if any such certificate is countersigned by a registrar and the Board shall by resolution so authorize, the signatures of such authorized officer or any transfer agent may be facsimiles. In case any officer or officers or transfer agent of the Corporation who shall have signed, or whose facsimile signature or signatures shall have been placed upon any such certificate shall cease to be such officer or officers or transfer agent before such certificate shall have been issued, such certificate may be issued by the Corporation with the same effect as though the person or persons who signed such certificate, or whose facsimile signature or signatures shall have been placed thereupon were such officer or officers or transfer agent at the date of issue. A stock ledger shall be kept of the respective names of the persons, firms or corporations owning stock represented by certificates for stock of the Corporation, the number, class and series of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled and a new certificate or certificates shall not be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 6.04 or as otherwise required by law.

Section 6.02. *Transfers of Stock.* Transfers of shares of the stock of the Corporation shall be made on the stock books and records of the Corporation only by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, or with a transfer agent duly appointed, and upon surrender of the certificate or certificates for such shares properly endorsed (or, with respect to uncertificated shares, by delivery of duly executed instructions or in any other manner permitted by law) and payment of all taxes thereon. The person in whose name shares of stock stand on the stock books and records of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation.

Section 6.03. *Regulations.* The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of uncertificated shares or certificates for stock of the Corporation. The Board may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

Section 6.04. *Lost, Stolen, Destroyed and Mutilated Certificates.* The owner of any stock of the Corporation shall immediately notify the Corporation of any

loss, theft, destruction or mutilation of any certificate therefor, and the Corporation may issue uncertificated shares or a new certificate for stock in the place of any certificate theretofore issued by it and alleged to have been lost, stolen or destroyed, and the Board may, in its discretion, require the owner of the lost, stolen or destroyed certificate or his legal representatives to give the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties, as the Board shall in its uncontrolled discretion determine, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate, or the issuance of any such new certificate or uncertificated shares. The Board may, however, in its discretion refuse to issue any such new certificate or uncertificated shares except pursuant to legal proceedings under the laws of the State of Delaware in such case made and provided.

Section 6.05. *Fixing Date for Determination of Stockholders of Record.*

(a) 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, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the General Corporation Law, shall be the first date on which signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of

business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by the General Corporation Law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE VII

Corporate Seal

The corporate seal of the Corporation shall be in the form of a circle and shall bear the full name of the Corporation and the words and figures "Corporate Seal 1968 Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall be the calendar year.

ARTICLE IX

Indemnification

Section 9.01. *Right to Indemnification and Advancement of Expenses.* The Corporation shall, to the fullest extent permitted by applicable law as then in effect, indemnify any person (the "Indemnitee") who was or is involved in any manner

(including, without limitation, as a party or a witness), or is threatened to be made so involved, in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative (including without limitation, any action, suit or proceeding by or in the right of the Corporation to procure a judgment in its favor, but excluding any action, suit, or proceeding, or part thereof, brought by such person against the Corporation or any affiliate of the Corporation unless consented to by the Corporation) (a "Proceeding") by reason of the fact that he is or was a director, officer, or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding (or part thereof). Such indemnification shall be a contract right. Each Indemnitee shall also have the right to receive payment in advance of any expenses incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.

Section 9.02. *Contracts and Funding.* The Corporation may enter into contracts with any director, officer, or employee of the Corporation in furtherance of the provisions of this Article IX and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification and/or advancement of expenses as provided in this Article IX.

Section 9.03. *Definitions.* For purposes of this Article IX, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, or employee of the Corporation which imposes duties on, or involves services by, such director, officer, or employee with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner not opposed to the best interest of a corporation.

Section 9.04. *Indemnification and Advancement of Expenses Not Exclusive Right.* The right of indemnification and advancement of expenses provided in this Article IX shall not be exclusive of any other rights to which a person seeking indemnification and/or advancement of expenses may otherwise be entitled, under any statute, by-law, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding

such office. The provisions of this Article IX shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity and/or advancement of expenses under this Article IX and shall be applicable to Proceedings commenced or continuing after the adoption of this Article IX, whether arising from acts or omissions occurring before or after such adoption.

Section 9.05. *Claims for Indemnification or Advancement of Expenses; Procedures.* In furtherance, but not in limitation, of the foregoing provisions, the following procedures and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Article IX:

(a) *Advancement of Expenses.* All reasonable expenses incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee by the Corporation within 30 days after the receipt by the Corporation of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the expenses incurred by the Indemnitee. In addition, such statement or statements shall, to the extent required by law at the time of such advance, and otherwise except as may be determined by or under the authority of the General Counsel, include or be accompanied by a written undertaking by or on behalf of the Indemnitee to repay the amounts advanced if it should ultimately be determined that the Indemnitee is not entitled to be indemnified against such expenses. Notwithstanding the absence of such a written undertaking, acceptance of any such advancement of expenses shall constitute such an undertaking by the Indemnitee.

(b) *Written Request for Indemnification.* To obtain indemnification under this Article IX, an Indemnitee shall submit to the Secretary a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the Indemnitee's entitlement to indemnification shall be made within a reasonable time after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation.

(c) *Procedure for Determination.* Where the Indemnitee is a current or former director or a current officer of the Corporation, the Indemnitee's entitlement to indemnification under this Article IX shall be determined (i) by the Board by a majority vote of a quorum (as defined in Article II of these By-laws) consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such

quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders, but only if a majority of the disinterested directors, if they constitute a quorum of the Board, presents the issue of entitlement to indemnification to the stockholders for their determination. Where the Indemnitee is not a current or former director or a current officer of the Corporation, the Indemnitee's entitlement to indemnification under this Article IX may be determined by the General Counsel. For purposes of this Article IX, the term "officer," when used with respect to the Corporation, shall mean those officers of the Corporation who are deemed to be Executive Officers for purposes of the annual report of the Corporation filed on Form 10-K under the Exchange Act.

Section 9.06. *Amendment or Repeal.* Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE X

By-laws

Section 10.01. *Inspection.* A copy of the By-laws shall at all times be kept in a convenient place at the principal office of the Corporation, and shall be open for inspection by stockholders during business hours.

Section 10.02. *Amendments.* Except as otherwise specifically provided by the General Corporation Law, these By-laws may be added to, amended, altered or repealed at any meeting of the Board by vote of a majority of the entire Board, provided that written notice of any such proposed action shall be given to each director prior to such meeting, or that notice of such addition, amendment, alteration or repeal shall have been given at the preceding meeting of the Board.

Section 10.03. *Construction.* The masculine gender, where appearing in these By-laws, shall be deemed to include the feminine gender.

ARTICLE XI

Emergency By-laws

Section 11.01. *Emergency By-laws.* This Article XI shall be operative during any emergency resulting from an attack on the United States or on a locality in which the Corporation conducts its business or customarily holds meetings of its Board or its stockholders, or during any nuclear or atomic disaster, or during the existence of any catastrophe or other similar emergency condition (including without limitation apparent terrorist activity or the imminent threat of such activity, chemical and biological attacks, natural disasters, or other hazards or causes commonly known as acts of God), as a result of which a quorum of the Board or the Executive Committee thereof cannot readily be convened for action (an "Emergency"), notwithstanding any different or conflicting provisions in the preceding Articles of these By-laws, the Certificate of Incorporation or the General Corporation Law. To the extent not inconsistent with the provisions of this Article XI, the By-laws provided in the other Articles of these By-laws and the provisions of the Certificate of Incorporation shall remain in effect during such Emergency and upon termination of such Emergency, the provisions of this Article XI shall cease to be operative.

Section 11.02. *Meetings.* During any Emergency, a meeting of the Board, or any committee thereof, may be called by the Chairman or any other member of the Board or the Chief Executive Officer, or any member of the Corporation's Operating Committee (each, a "Designated Officer" and collectively, the "Designated Officers"), or the Secretary. Notice of the time and place of any meeting of the Board or any committee thereof during an Emergency shall be given by any available means of communication by the individual calling the meeting to such of the directors and/or Designated Officers who shall be deemed to be directors of the Corporation for purposes of obtaining a quorum during an Emergency if a quorum of directors cannot otherwise be obtained during such Emergency, in each case, as it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the individual calling the meeting, circumstances permit.

Section 11.03. *Quorum.* At any meeting of the Board, or any committee thereof, called in accordance with Section 11.02 above, the presence of one director shall constitute a quorum for the transaction of business. Vacancies on the Board, or any committee thereof, may be filled by a majority vote of the directors in attendance at the meeting. In the event that no directors are able to attend the meeting of the Board, then the Designated Officers in attendance shall serve as directors for the meeting, without any

additional quorum requirement and will have full powers to act as directors of the Corporation for such meeting.

Section 11.04. *Amendments.* At any meeting called in accordance with Section 11.02 above, the Board or a committee of the Board, as the case may be, may modify, amend or add to the provisions of this Article XI so as to make any provision that may be practical or necessary for the circumstances of the Emergency.

Section 11.05. *Management Contingency Plan.* During an Emergency, the Corporation shall be managed by the Operating Committee under the direction of the Chief Executive Officer. In the absence of the Chief Executive Officer or his or her successor, the Operating Committee shall act under the direction of the Operating Committee member with the longest tenure with the Corporation.

Section 11.06. *Liability.* No officer, director or employee of the Corporation acting in accordance with the provisions of this Article XI shall be liable except for willful misconduct.

Section 11.07. *Repeal or Change.* The provisions of this Article XI shall be subject to repeal or change by further action of the Board or by action of the stockholders, but no such repeal or change shall modify the provisions of Section 11.06 of this Article XI with regard to action taken prior to the time of such repeal or change.

Section 11.08. *Termination of Emergency.* The provisions of this Article XI shall cease to be operative upon the termination of the Emergency as determined by a quorum of the Board or the Executive Committee thereof in accordance with Sections 2.06 and 3.01, respectively, of these By-laws.

Exhibit C

PROPOSAL [ ]: RATIFICATION OF SPECIAL MEETING PROVISIONS IN THE COMPANY'S BY-LAWS

Overview

The Board is seeking shareholder ratification of the provisions of the Company's By-Laws, as amended (the "By-Laws"), that grant shareholders who own at least 20% of the Company's outstanding shares of common stock and satisfy other requirements the ability to direct the Company to call a special meeting of shareholders (the "Special Meeting Provisions").

In 2006, subsequent to a shareholder proposal that passed at the annual meeting and pursuant to the Company's Certificate of Incorporation, the Board amended the Company's By-Laws to allow shareholders who own at least 33% of the Company's outstanding shares of common stock and satisfy other requirements the ability to direct the Company to call a special meeting of shareholders. In 2009, the Company amended its By-Laws to reduce the ownership percentage needed to request that the Company call a special meeting of shareholders (the "Ownership Threshold") from 33% to 20%. Since amending its By-Laws, shareholder proposals to lower the Ownership Threshold further have been voted on at each of the Company's annual meetings held in 2010, 2014, 2015 and 2017. Each such proposal was voted down by the Company's shareholders. The Company's Certificate of Incorporation confers upon the Board the power to further amend the Company's By-laws notwithstanding the vote on previous proposals or on this Proposal.

The Board is hereby requesting that the Company's shareholders ratify its current Special Meeting Provisions.

Ratification of the Special Meeting Provisions

The Special Meeting Provisions, which are set forth in Section 1.02 of the By-Laws, provide:

- One or more shareholders of record (acting on their own behalf or on behalf of beneficial owners) owning shares representing at least 20% of the outstanding shares of common stock of the Company have the ability to require the Company to call a special meeting of the shareholders.

- Stock ownership is determined under a "net long" standard to provide assurance that shareholders 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.

- Shareholders seeking to call a special meeting would be required to provide information similar to the information required for shareholder nominations at annual meetings under the By-Laws.

- 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 not a proper subject for

shareholder action under applicable law;

- an otherwise valid special meeting request is submitted during the period commencing 90 days prior to the first anniversary of the date of the notice of annual meeting for the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) 30 calendar days after the first anniversary of the date of the immediately preceding annual meeting;

- an identical or substantially similar item (as determined in good faith by the Board, a "Similar Item"), other than the election of directors, was presented at a meeting of the shareholders held not more than 12 months before the special meeting request is delivered;

- a Similar Item, including an item related to the removal or election of directors, was presented at a meeting of the shareholders held not more than 90 days before the special meeting request is delivered; or

- a Similar Item is included in the Company's notice as an item of business to be brought before a shareholder meeting that has been called by the time the special meeting request is delivered but not yet held.

The above summary is subject, in all respects, to the Special Meeting Provisions, which are attached to this Proxy Statement as Appendix [ ].

Purpose of the Special Meeting Provisions

Board Consideration of Appropriate Shareholder Special Meeting Rights. The Board evaluated a number of different factors in adopting the existing right of shareholders to call a special meeting and setting the Ownership Threshold at 20%, including the interests of the Company and its shareholder base, the time and resources required to convene a special meeting, and the opportunities shareholders otherwise have to engage with the Board and senior management in between annual meetings.

Significant Costs Associated with Special Shareholder Meetings. Convening a special meeting of shareholders is an extraordinary and expensive event that the Company believes should only be called if a substantial portion of the Company's shareholder base determines that such a meeting is necessary. The current 20% Ownership Threshold ensures that special meetings called by shareholders are of concern to a significant number of shareholders such that they merit these costs, which include the preparation, printing and distribution of disclosure documents, soliciting proxies, tabulating votes and numerous hours spent by management that would otherwise be devoted to managing the day-to-day business operations of the Company.

The Ownership Threshold Ensures that a Significant Portion of the Shareholder Base Believes in the Urgency of Holding a Special Meeting. The Board believes that a small minority of shareholders should not be entitled to utilize the mechanism of special meetings for their own interests, which may not be shared more broadly by the Company's shareholders. Likewise, the Board believes that only shareholders with full and continuing economic interest in our common stock and full voting rights should be entitled to request that the Company call a special meeting.

The Board believes that providing shareholders owning 20% of the Company's outstanding stock with the right to call a special meeting strikes the right balance between enhancing our shareholders' ability to act on important and urgent matters and protecting against misuse of the right by a small number of shareholders whose interests may not be shared by the majority of shareholders.

20% Special Meeting Ownership Threshold is Consistent with Market Practice. The 20% 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 402 of the S&P 500 companies have a special meeting ownership threshold that is equal to or higher than that of the Company or do not provide any such rights. In short, the Company's shareholders have a right that is equal to or more expansive than that of 80% of S&P 500 companies.

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 shareholder rights available under its By-Laws and Certificate of Incorporation, applicable law, and the Company's commitment to shareholder engagement and responsiveness to shareholder concerns as demonstrated by, among other things, holding a formal shareholder outreach program twice a year, covering a wide range of issues with a broad group of shareholders. For additional information about our shareholder engagement and actions we have recently taken in response to these discussions, please see page [ ] of this Proxy Statement.

In addition to the existing right of shareholders to call a special meeting at the 20% Ownership Threshold, shareholder approval is required for many key corporate actions before action may be taken. Under Delaware law and New York Stock Exchange rules, the Company must submit certain important matters to a shareholder vote, including the adoption of equity compensation plans and amendments to its Certificate of Incorporation.

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

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

existing Special Meeting Provisions.

The Board of Directors Unanimously Recommends that Shareholders Vote "FOR" the Proposal to Ratify the Special Meeting Provisions.