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

DIVISION OF
CORPORATION FINANCE

March 1, 2019

Edward J. Lee
Wachtell, Lipton, Rosen & Katz
ejlee@wlrk.com

Re: United Technologies Corporation
Incoming letter dated December 21, 2018

Dear Mr. Lee:

This letter is in response to your correspondence dated December 21, 2018 and February 5, 2019 concerning the shareholder proposal (the "Proposal") submitted to United Technologies Corporation (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 9, 2019 and January 25, 2019. 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,

M. Hughes Bates
Special Counsel

Enclosure

cc: John Chevedden
***

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

March 1, 2019

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: United Technologies Corporation
Incoming letter dated December 21, 2018

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary, this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). In this regard, we note your representation that the Company will provide shareholders at its 2019 annual meeting with an opportunity to approve an amendment to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company's governing documents. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Courtney Haseley
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.

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MICHAEL J. SCHOBEL
ELINA TETELBAUM

February 5, 2019

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *United Technologies Corporation — 2019 Annual Meeting; Securities Exchange Act of 1934; Rule 14a-8(j)*

Ladies and Gentlemen:

On December 21, 2018, we submitted a letter (the "No-Action Request") on behalf of our client, United Technologies Corporation (the "Company"), requesting that the staff of the Division of Corporation Finance (the "Staff") concur with the Company's view that it may properly exclude a shareowner proposal (the "Proposal") and statements in support thereof received from Mr. John Chevedden (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2019 annual meeting of shareowners (the "2019 Proxy Materials"). The No-Action Request indicated our belief that the Proposal may be excluded from the 2019 Proxy Materials because, among other reasons, the Company's Board of Directors (the "Board") was expected, at its meeting on February 4, 2019, to take action that would substantially implement the Proposal under Rule 14a-8(i)(10).

We write supplementally to confirm that at its meeting on February 4, 2019, the Board adopted a resolution approving, subject to shareowner approval, an amendment to the Company's Certificate of Incorporation (the "Certificate") to eliminate Article Ninth from the Certificate in its entirety (the "Proposed Certificate Amendment"). Article Ninth is the only provision in the Company's governing documents that includes a supermajority vote provision. The Proposed Certificate Amendment is set forth in Exhibit A attached hereto.

The Board also approved submission of the Proposed Certificate Amendment to a shareowner vote at the 2019 annual meeting of shareowners, which approval is required under Delaware law, and recommended that shareowners vote for the approval of the Proposed Certificate Amendment. If the Proposed Certificate Amendment receives the requisite shareowner approval, the Company's governing documents will no longer contain any supermajority voting requirements. Thus, the Board has taken each of the actions requested by the Proposal. For these reasons, we believe the Proposal is excludable under Rule 14a-8(i)(10).

ANALYSIS

Rule 14a-8(i)(10) permits a company to exclude a shareowner proposal from its proxy materials if the company has substantially implemented the proposal. Applying this standard, the Staff has noted that a determination that the company has substantially implemented the proposal depends upon whether the company's particular policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g.*, *United Technologies Corp.* (avail. Feb. 14, 2018); *Apple Inc.* (avail. Dec. 12, 2017); *Brocade Commc'ns Sys., Inc.* (avail. Dec. 19, 2016); *Exxon Mobil Corp*. (avail. Mar. 17, 2015); *Walgreen Co.* (avail. Sept. 26, 2013); *General Dynamics Corp.* (avail. Feb. 6, 2009). At the same time, as discussed in the No-Action Request, a company need not implement a proposal in exactly the same manner as set forth by the proponent as long as the proposal's "essential objective" is addressed. *See, e.g.*, *Apple, Inc.* (avail. Nov. 19, 2018); *MGM Resorts International* (avail. Feb. 28, 2012); *Exelon Corp.* (avail. Feb. 26, 2010) and *Masco Corp.* (avail. Mar. 29, 1999).

Moreover, as discussed in the No-Action Request, the Staff consistently has granted no-action relief in situations where the board lacks unilateral authority to adopt amendments to a certificate of incorporation or bylaws, but has taken all of the steps within its power to eliminate the supermajority voting requirements in those documents and submitted the issue for shareowner approval. In fact, the Staff took such a position with respect to a previous no-action letter submitted by the Company addressing a proposal substantially similar to the Proposal. *See United Technologies Corp.* (avail. Feb. 14, 2018). For that prior proposal, which was also submitted by the Proponent for the Company's 2018 annual meeting of shareowners, the Proponent similarly requested that the Board take the necessary steps so that each shareowner

voting requirement in the Certificate and the Bylaws that calls for a greater than simple majority vote be changed to require a majority of the votes cast for and against such proposals. The Board authorized an amendment to the Certificate that was substantially similar to the Proposed Certificate Amendment, removing Article Ninth of the Certificate in its entirety and committing to submit such amendment to a vote of the Company's shareowners at the subsequent annual meeting (the "2018 Certificate Amendment"). The Staff concurred with the exclusion under Rule 14a-8(i)(10), noting in particular "that the Company will provide shareowners at the 2018 Annual Meeting with an opportunity to approve an amendment to eliminate Article Ninth" of the Certificate. *See also*, *The Brink's Co.* (avail. Feb. 5, 2015) (concurring with exclusion of a simple majority proposal under Rule 14a-8(i)(10) in light of the company's "representation that Brink's will provide shareowners at Brink's 2015 annual meeting with an opportunity to approve amendments to Brink's articles of incorporation that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *Becton, Dickinson and Co.* (avail. Nov. 27, 2012) (concurring with the exclusion of proposals under Rule 14a-8(i)(10) stating that "it appears that [the company's] policies, practices, and procedures compare favorably with the guidelines of the proposal and that [the company] has, therefore substantially implemented the proposal."); and *The Home Depot, Inc.* (avail. Jan. 8, 2008) and *The Home Depot, Inc.* (avail. Mar. 28, 2002) (in both instances concurring with exclusion of proposals seeking simple majority vote requirements when the board authorized and submitted for shareowner approval an amendment to the company's certificate deleting the "fair price" provision from the certificate, which contained the only supermajority voting requirement).

Finally, the Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take a certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g.*, *United Technologies Corporation* (avail. Feb. 14, 2018); *State Street Corporation* (avail. Mar. 5, 2018); *AbbVie Inc.* (avail. Feb. 16, 2018); *PPG Industries, Inc.* (avail. Jan. 23, 2018); *Dover Corporation* (avail. Dec. 15, 2017); *T. Rowe Price Group, Inc.* (avail. Jan. 17. 2018); *Eli Lilly and Company* (avail. Jan. 8, 2018); *Windstream Holdings* (avail. Feb. 14, 2017); *Medivation, Inc.* (avail. Mar. 13, 2015); *NETGEAR, Inc.* (avail. Mar. 31, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson & Johnson* (avail. Feb. 19, 2008); *Hewlett-Packard Co.* (avail. Dec. 11, 2007); *General Motors Corp.* (avail. Mar. 3, 2004); and *Intel Corp.* (avail. Mar. 11, 2003) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

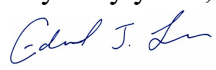
Accordingly, consistent with the precedents cited above, the "essential objective" of the Proposal has been satisfied, and the Proposal may be excluded from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we believe that the Proposal has been substantially implemented and, therefore, is excludable under Rule 14a-8(i)(10). Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2019 Proxy Materials in reliance on Rule 14a-8(i)(10).

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of any written response to this letter. Please do not hesitate to contact the undersigned at (212) 403-1155 or EJLee@wlrk.com or Joshua R. Cammaker at (212) 403-1331 or JRCammaker@wlrk.com.

Very truly yours,



Edward J. Lee

cc: John Chevedden
Peter J. Graber-Lipperman, United Technologies Corporation
Joshua R. Cammaker, Wachtell, Lipton, Rosen & Katz

Exhibit A

(CONFORMED COPY)

UNITED TECHNOLOGIES CORPORATION

Restated
Certificate of Incorporation

~~April 25, 2016~~
[●], 2019

RESTATED

CERTIFICATE OF INCORPORATION

of

UNITED TECHNOLOGIES CORPORATION

Pursuant to Section 245

of the General Corporation Law

of the State of Delaware

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Original Certificate of Incorporation filed

with the Secretary of State

of the State of Delaware

on July 21, 1934,

under the name

United Aircraft Corporation

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FIRST: The name of the Corporation is UNITED TECHNOLOGIES CORPORATION.

SECOND: Its registered office or place of business in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent is The Corporation Trust Company and the address of the said registered agent is Corporation Trust Center, 1209 Orange Street, in the said City of Wilmington.

THIRD: The nature of the business, or objects or purposes to be transacted, promoted or carried on, are those necessary to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock of all classes which the Corporation shall have authority to issue is 4,250,000,000 shares, of which 250,000,000 shares shall be Preferred Stock of the par value of $1.00 each (hereinafter called "Preferred Stock") and 4,000,000,000 shares shall be Common Stock of the par value of $1.00 each (hereinafter called "Common Stock").

The designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the shares of each class are as follows:

1. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed herein or in the resolution or resolutions providing for the issue of such series, adopted by the Board of Directors as hereinafter provided.

2. Authority is hereby expressly granted to the Board of Directors of the Corporation, subject to the provisions of this Article Fourth and to the limitations prescribed by law, to authorize the issue of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or noncumulative.

(c) Whether the shares of such series shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) Whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of stock of the

Corporation, and, if provision be made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange.

(f) The extent, if any, to which the holders of the shares of such series shall be entitled to vote with respect to the election of directors or otherwise.

(g) The restrictions, if any, on the issue or reissue or any additional Preferred Stock.

(h) The rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

3. Except as otherwise required by law and except for such voting powers with respect to the election of directors or other matters as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, the holders of any such series shall have no voting power whatsoever. Subject to such restrictions as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, any amendment to the Certificate of Incorporation which shall increase or decrease the authorized stock of any class or classes may be adopted by the affirmative vote of the holders of a majority of the outstanding shares of the voting stock of the Corporation.

4. No holder of stock of any class of the Corporation shall as such holder have any preemptive or preferential right of subscription to any stock of any class of the Corporation or to any obligations convertible into stock of the Corporation, issued or sold, or to any right of subscription to, or to any warrant or option for the purchase of any thereof, other than such (if any) as the Board of Directors of the Corporation, in its discretion, may determine from time to time.

5. The Corporation may from time to time issue and dispose of any of the authorized and unissued shares of Common Stock or of Preferred Stock for such consideration, not less than its par value, as may be fixed from time to time by the Board of Directors, without action by the stockholders. The Board of Directors may provide for payment therefor to be received by the Corporation in cash, property or services. Any and all such shares of the Preferred or Common Stock of the Corporation the issuance of which has been so authorized, and for which consideration so fixed by the Board of Directors has been paid or delivered, shall be deemed full paid stock and shall not be liable to any further call or assessment thereon.

FIFTH: The minimum amount of capital with which the Corporation will commence business is One Thousand Dollars.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of corporate debts.

EIGHTH: Subject to the provisions of the laws of the State of Delaware, the following provisions are adopted for the management of the business and for the conduct of the affairs of the Corporation, and for defining, limiting and regulating the powers of the Corporation, the directors and the stockholders:

(a) The books of the Corporation may be kept outside the State of Delaware at such place or places as may, from time to time, be designated by the Board of Directors.

(b) The business of the Corporation shall be managed by its Board of Directors; and the Board of Directors shall have power to exercise all the powers of the Corporation, including (but without limiting the generality hereof) the power to create mortgages upon the whole or any part of the property of the Corporation, real or personal, without any action of or by the stockholders, except as otherwise provided by statute or by the Bylaws.

(c) The number of the directors shall be fixed by the Bylaws, subject to alteration, from time to time, by amendment of the Bylaws either by the Board of Directors or the stockholders. An increase in the number of directors shall be deemed to create vacancies in the Board, to be filled in the manner provided in the Bylaws. Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time, in such manner as shall be provided in the Bylaws.

(d) The Board of Directors shall have power to make and alter Bylaws, *subject* to such restrictions upon the exercise of such power as may be imposed by the incorporators or the stockholders in any Bylaws adopted by them from time to time.

(e) The Board of Directors shall have power, in its discretion, to fix, determine and vary, from time to time, the amount to be retained as surplus and the amount or amounts to be set apart out of any of the funds of the Corporation available for dividends as working capital or a reserve or reserves for any proper purpose, and to abolish any such reserve in the manner in which it was created.

(f) The Board of Directors shall have power, in its discretion, from time to time, to determine whether and to what extent and at what times and places and under what conditions and regulations the books and accounts of the Corporation, or any of them, other than the stock ledger, shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by law or authorized by resolution of the directors or of the stockholders.

(g) Upon any sale, exchange or other disposal of the property and/or assets of the Corporation, payment therefor may be made either to the Corporation or directly to the stockholders in proportion to their interests, upon the surrender of their respective stock certificates, or otherwise, as the Board of Directors may determine.

(h) [Reserved].

(i) In case the Corporation shall enter into any contract or transact any business with one or more of its directors, or with any firm of which any director is a member, or with any corporation or association of which any director is a stockholder, director or officer, such contract or transaction shall not be invalidated or in any way affected by the fact that such director has or may have an interest therein which is or might be adverse to the interests of the Corporation, even though the vote of such director might have been necessary to obligate the Corporation upon such contract or transaction; *provided*, that the fact of such interest shall have been disclosed to the other directors or the stockholders of the Corporation, as the case may be, acting upon or with reference to such contract or transaction.

(j) Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this

Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

(k) The Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute; and all rights herein conferred are granted subject to this reservation.

NINTH~~: The stockholder vote required to approve Business Combinations (hereinafter defined) shall be as set forth in this Article Ninth.~~

~~SECTION 1. *Higher Vote for Business Combinations*. In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section 3 of this Article Ninth:~~

~~A. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or~~

~~B. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of $25,000,000 or more; or~~

~~C. the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of $25,000,000 or more; or~~

~~D. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or~~

~~E. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder;~~

~~shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article Ninth, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Fourth of this~~

Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

SECTION 2. *Definition of "Business Combination"*. The term "Business Combination" as used in this Article Ninth shall mean any transaction which is referred to in any one or more of paragraphs A through E of Section 1.

SECTION 3. *When Higher Vote is Not Required*. The provisions of Section 1 of this Article Ninth shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their capacities as stockholders, the condition specified in the following paragraph A is met, or if in the case of any other Business Combination, the conditions specified in either of the following paragraphs A or B are met:

A. Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

B. Price and Procedure Requirements. All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination (the "Consummation Date") of the consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be an amount at least equal to the higher of the following (it being intended that the requirements of this paragraph B(i) shall be required to be met with respect to all shares of Common Stock outstanding, whether or not the Interested Stockholder has previously acquired any shares of the Common Stock):

(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of Common Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of Common Stock; or

(b) the Fair Market Value per share of Common Stock on the Announcement Date.

(ii) The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of the consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock, other than the Common Stock, in such Business Combination shall be an amount at least equal to the highest of the following (it being intended that the requirements of this paragraph B (ii) shall be required to be met with respect to all shares of every such other class of

outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(a) the highest per-share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of such class of Voting Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of such class of Voting Stock;

(b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date; or

(c) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations

thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

SECTION 4. *Certain Definitions*. For the purposes of this Article Ninth:

A. A "person" shall mean any individual, firm, corporation or other entity.

B. "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

C. A person shall be a "beneficial owner" of any Voting Stock:

(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

D. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Section 4, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Section 4 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

E. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1983.

F. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph B of this Section 4, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

G. "Disinterested Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.

H. "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.

I. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in paragraph B(i) and (ii) of Section 3 of this Article Ninth shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

SECTION 5. *Powers of Disinterested Directors*. A majority of the Disinterested Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article Ninth, including without limitation (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph B of Section 3 have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of $25,000,000 or more; and the good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all the purposes of this Article Ninth.

SECTION 6. *No effect on Fiduciary Obligations of Interested Stockholders*. Nothing contained in this Article Ninth shall be construed to relieve the Board of Directors or any Interested Stockholder from any fiduciary obligation imposed by law.

SECTION 7. *Amendment, Repeal, etc*. Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the voting power of the shares of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with,

~~this Article Ninth of this Certificate of Incorporation; provided, however, that the preceding provisions of this Section 7 shall not be applicable to any amendment to this Article Ninth of this Certificate of Incorporation, and such amendment shall require only such affirmative vote as is required by law and any other provisions of this Certificate of Incorporation, if such amendment shall have been approved by a majority of the Disinterested Directors.TENTH~~: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law for payment of unlawful dividends or unlawful stock repurchases or redemption, or (iv) for any transaction from which the director derived an improper personal benefit.

JOHN CHEVEDDEN

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January 9, 2019

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

 # 1 Rule 14a-8 Proposal
United Technologies Corporation (UTX)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

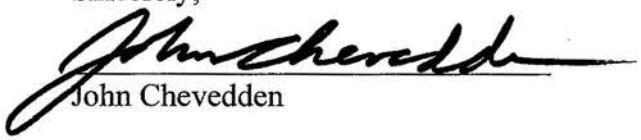
The company is defying the principle that it relies on:
To "avoid the possibility of shareholders having to consider matters [again]" on page 4 first paragraph.

The Board was unprepared for its 2018 annual meeting and thus its proposal on this very same topic failed. So now shareholders must consider this same topic again in 2019 – thus guaranteeing "shareholders having to consider matters [again]."

The company published its failed vote:
5) A proposal that shareowners approve an amendment to the Company's Restated Certificate of Incorporation to eliminate Article Ninth, which requires a supermajority voting standard for the approval of certain business combination transactions, as disclosed in UTC's Proxy Statement dated March 19, 2018. The requisite 80% of the outstanding shares did not vote in favor of the proposal and the proposal was not approved. The results of the voting were as follows:

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,



John Chevedden

cc: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

[UTX: Rule 14a-8 Proposal, November 12, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn is mentioned 25-times in our bylaws. This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had equal access to independent proxy voting advice. Currently a 1%-minority can frustrate the will of our 79%-shareholder majority on certain issues in an election in which 80% of shares cast ballots.

The 2018 management proposal on this same topic received positive votes by an overwhelming 100-to-one margin. Ellen Kullman, the Chair of our governance committee, could see the votes coming in at a overwhelming 100-to-one ratio and yet did not do enough to make sure that a few more votes came in order for the management proposal to avoid failure.

How does Ms. Kullman explain a management ballot failure on a proposal where the positive votes outnumbered the negative votes by a 100-to-one margin? Ms. Kullman is also our Lead Director and served on the Boards of Amgen, Goldman Sachs and Dell Technologies. Thus it is important to hear a short and clear explanation from Ms. Kullman that does not hide behind an all too frequent boring, long-winded management explanation.

Please vote yes:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

JOHN CHEVEDDEN

***

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January 25, 2019

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

 # 2 Rule 14a-8 Proposal
United Technologies Corporation (UTX)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 21, 2018 no-action request.

The company highlighted the concern the Commission had to "avoid the possibility of shareholders having to consider matters [again]." The company referenced Exchange Act Releases of 1976, 1983 and 1988.

With this as a background the company related how it was unprepared for its 2018 annual meeting and thus its proposal on this very same topic failed. So now shareholders must consider this same topic again in 2019 – thus guaranteeing "shareholders having to consider matters [again]." This is the exact opposite of the concern the Commission had according to the company.

Common sense says that once a company takes a course of action that previously failed (as in 2018), it cannot claim it is now acting "favorably" if it proposes to take the same failed course of action again.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,

John Chevedden

cc: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

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LEONARD M. ROSEN (1965-2014)

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HERBERT M. WACHTELL
PAUL VIZCARRONDO, JR.
THEODORE N. MIRVIS
EDWARD D. HERLIHY
DANIEL A. NEFF
ANDREW R. BROWNSTEIN
MARC WOLINSKY
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JEFFREY M. WINTNER

TREVOR S. NORWITZ
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ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEVEN A. COHEN
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DAVID C. KARP
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JOSHUA R. CAMMAKER
MARK GORDON
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December 21, 2018

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *United Technologies Corporation — 2019 Annual Meeting; Securities Exchange Act of 1934; Rule 14a-8(j)*

Ladies and Gentlemen:

This letter is submitted on behalf of our client, United Technologies Corporation, a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to request that the Staff of the Division of Corporation Finance (the "Staff") concur with the Company's view that, for the reasons stated herein, it may properly exclude from the proxy materials (the "2019 Proxy Materials") to be distributed by the Company in connection with its 2019 annual meeting of shareholders (the "2019 Annual Meeting") the shareholder proposal and supporting statement (the "Proposal") submitted by

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

Mr. John Chevedden (the "Proponent"), which are further described below and attached hereto as Exhibit A.

Pursuant to Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting this letter and its attachments to the Securities and Exchange Commission (the "Commission") by email. In accordance with Rule 14a-8(j) of the Exchange Act, the Company is submitting this letter to the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission and is simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intention to omit the Proposal from the 2019 Proxy Materials. The Company will promptly forward to the Proponent any response from the Staff to this letter that the Staff transmits only to the Company.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if he elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

THE PROPOSAL

The text of the resolution contained in the Proposal states:

> RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to: (1) Rule 14a-8(i)(10) upon confirmation that the Company's Board of Directors (the "Board") has approved the resolutions, described below, approving and submitting for shareholder approval at the 2019 Annual Meeting the Certificate Amendment (as defined below) that will substantially implement the Proposal; 2

Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and (3) Rule 14a-8(i)(3 because the Proposal is impermissibly vague and indefinite. Both the Governance and Public Policy Committee of the Board and the full Board will consider the resolutions at their next regularly scheduled meetings to be held on February 1, 2019 and February 4, 2019, respectively (collectively, the "February Board Meeting").

BACKGROUND

A. The Proposal

The Company received the Proposal, accompanied by a cover letter from the Proponent, via email on November 12, 2018. Copies of the Proposal, cover letter, and correspondence between the Proponent and the Company are attached hereto as Exhibit A.

B. The Anticipated Amendment to the Certificate of Incorporation

The Company's Restated Certificate of Incorporation (the "Certificate of Incorporation") contains one provision calling for a supermajority vote of shareholders, and the Company's Amended and Restated Bylaws (the "Bylaws") do not contain any such provisions.

Article Ninth of the Certificate of Incorporation currently requires a vote of 80% of the Company's outstanding shares to approve certain business combinations with a party that owns 10% or more of the Company's outstanding common stock or to repeal Article Ninth of the Certificate of Incorporation (the "Supermajority Provisions").

The Board discussed the Proposal at its meeting held on December 12, 2018, and will consider, at the February Board Meeting, resolutions approving the elimination of the Supermajority Provisions in their entirety (the "Certificate Amendment"), declaring the Certificate Amendment advisable and in the best interests of the Company and its shareholders, directing that the Certificate Amendment be submitted to shareholders for adoption at the 2019 Annual Meeting and recommending that shareholders vote to adopt the Certificate Amendment.

The Certificate of Incorporation, marked to show the changes from the current version that will be considered at the February Board Meeting is attached hereto as Exhibit B.

If the Board adopts the resolutions described above, and the shareholders at the 2019 Annual Meeting approve the Certificate Amendment, there will be no supermajority provisions in the Certificate of Incorporation or the Bylaws, and approval of any business combinations with interested shareholders would be subject to the approval of the requisite number of shareholders under the Delaware General Corporation Law (the "DGCL"), and any future amendments to the Certificate of Incorporation would require the approval of a majority of the outstanding shares of common stock pursuant to Section 242 of the DGCL.

ANALYSIS

The Proposal May Be Excluded under Rule 14a-8(i)(10) Because the Company Will Have Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy solicitation materials if the company has already "substantially implemented" a proposal. The Commission adopted the "substantially implemented" standard in 1983, after determining that the "previously formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-40018 (May 21, 1988); Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"); and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be fully effected by a company to be excluded; provided that they have been "substantially implemented." *See* the 1983 Release.

Applying this standard, the Staff has permitted exclusion under Rule 14a-8(i)(10) when a company's policies, practices and procedures compare favorably with the guidelines of a proposal. *See, e.g.*, *United Technologies Corp.* (avail. Feb. 14, 2018); *Apple Inc.* (avail. Dec. 12, 2017); *Brocade Commc'ns Sys., Inc.* (avail. Dec. 19, 2016); *Exxon Mobil Corp*. (avail. Mar. 17, 2015); *Walgreen Co.* (avail. Sept. 26, 2013); and *General Dynamics Corp.* (avail. Feb. 6, 2009). The Staff has also permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of a proposal, even if the proposal had not been implemented exactly as proposed by a proponent. *See, e.g.*, *Apple, Inc.* (avail. Nov. 19, 2018); *MGM Resorts Int'l* (avail. Feb. 28, 2012); *Exelon Corp.* (avail. Feb. 26, 2010); and *Masco Corp.* (avail. Mar. 29, 1999).

The Staff has applied these standards to proposals, such as the Proposal received by the Company, that seek to eliminate supermajority provisions contained in a specific article of a certificate of incorporation and has agreed that such proposals could be substantially implemented by a board's authorizing an amendment to a certificate of incorporation that seeks to delete the article containing supermajority voting requirements from the certificate of incorporation in its entirety upon shareholder approval. In fact, the Staff took such position with respect to a previous no-action letter submitted by the Company addressing a proposal substantially similar to the Proposal. *See United Technologies Corp.* (avail. Feb. 14, 2018). For such prior proposal, which was also submitted by the Proponent for the Company's 2018 annual meeting of shareholders the "2018 Annual Meeting"), the Proponent similarly requested that the Board take the necessary steps so that each shareholder voting requirement in the Certificate of Incorporation and the Bylaws that calls for a greater than simple majority vote be changed to

require a majority of the votes cast for and against such proposals. The Board authorized an amendment to the Certificate of Incorporation that was substantially similar to the Certificate Amendment, removing Article Ninth of the Certificate of Incorporation in its entirety and committing to submit such amendment to a vote of the Company's shareholders at the subsequent annual meeting (the "2018 Certificate Amendment" . The Staff concurred with the exclusion under Rule 14a-8(i)(10), noting in particular "that the Company will provide shareholders at the 2018 Annual Meeting with an opportunity to approve an amendment to eliminate Article Ninth" of the Certificate of Incorporation. *See also The Brink's Co.* (avail. Feb. 5, 2015); *The Home Depot, Inc.* (avail. Jan. 8, 2008); and *The Home Depot, Inc.* (avail. Mar. 28, 2002).

B. The Essential Objective of the Proposal Is to Remove Any Supermajority Voting Requirements from the Certificate and the Bylaws

The essential objective of the Proposal is to remove the only supermajority provision in the Certificate of Incorporation and/or Bylaws — Article Ninth of the Certificate of Incorporation — and replace it with a majority voting standard. The supporting statement focuses on "certain issues" requiring a vote of more than 79% of shareholders, which clearly refers to the 80% supermajority voting provisions in Article Ninth of the Certificate of Incorporation.

Applying the principles described above, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals that are substantially similar to the Proposal that sought to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here with respect to the Certificate Amendment), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See, e.g.*, *QUALCOMM Inc.* (avail. Dec. 8, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [company's] certificate of incorporation and bylaws"); *Korn/Ferry Int'l* (avail. July 6, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation, approval of which will result in the replacement of each of the supermajority voting requirements in the certificate of incorporation and bylaws that are applicable to [the company's] common stock with a majority vote standard"); *The Southern Co.* (avail. Feb. 24, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve an amendment to [the company's] certificate of incorporation, approval of which will result in replacement of the only supermajority voting provision in [the company's] governing documents with a simple majority voting requirement" ; *Dover Corp.* (avail. Dec. 16, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next

annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation, which, if approved, will eliminate the only two supermajority voting provisions in [the company's] governing documents"); *AECOM* (avail. Nov. 1, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve an amendment to [the company's] certificate of incorporation, approval of which will result in the removal of the lone supermajority voting provision in [the company's] governing documents"); *The Brink's Co.* (avail. Feb. 5, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] articles of incorporation that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *Visa Inc.* (avail. Nov. 14, 2014) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation and bylaws that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *McKesson Corp.* (avail. Apr. 8, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation").

In addition, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of a proposal seeking to eliminate supermajority vote provisions where the amendments to the company's governing documents would result in replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement, including where such vote requirement is pursuant to the DGCL, which will be the case following the Certificate Amendment. *See, e.g.*, *QUALCOMM Inc.* (avail. Dec. 8, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendments to the company's certificate of incorporation and bylaws would result in a majority of the outstanding shares vote requirement pursuant to the DGCL); *Korn/Ferry International* (avail. July 6, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority vote of the voting power of the outstanding shares); *The Southern Co.* (avail. Feb. 24, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority of the issued and outstanding common stock vote requirement); *Dover Corp.* (avail. Dec. 16, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendments to the company's certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *AECOM* (avail. Nov. 1, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority of outstanding shares vote requirement pursuant to the DGCL); *The Brink's Co.* avail. Feb. 5, 2015 permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's articles of incorporation would result in a majority of outstanding shares vote requirement pursuant to Virginia corporation law); *Visa Inc.* (avail. Nov. 14, 2014) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where

amendments to the company's certificate of incorporation and bylaws would replace each supermajority vote requirement with a majority of the outstanding shares vote requirement); and *Hewlett-Packard Co.* (avail. Dec. 19, 2013) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the bylaw amendments replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement "compare[d] favorably with the guidelines of the proposal").

As in the foregoing no-action letters, the anticipated Certificate Amendment substantially implements the Proposal. If the recommended change to the Certificate of Incorporation is approved by the full Board at its regularly scheduled meeting on February 4, 2019, then the Board will authorize management to include the proposed change in the 2019 Proxy Materials and recommend that the shareholders vote to approve the proposed change to the Certificate of Incorporation at the 2019 Annual Meeting which is expected to be held in April 2019. If the proposed change to the Certificate of Incorporation receives the requisite shareholder approval at the 2019 Annual Meeting, then the only supermajority voting provision in the Company's Certificate and Bylaws, collectively, would be removed.

C. The Company Will Submit Supplemental Notification to the Staff Following Board Action on Management's Recommendation

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will submit a supplemental letter notifying the Staff of the Board's action on this matter, which (assuming Board approval) will include a copy of the amendments approved by the Board, shortly after the February Board Meeting. The Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take a certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g.*, *United Technologies Corporation* (avail. Feb. 14, 2018); *State Street Corporation* (avail. Mar. 5, 2018); *AbbVie Inc.* (avail. Feb. 16, 2018); *PPG Industries, Inc.* (avail. Jan. 23, 2018); *Dover Corporation* (avail. Dec. 15, 2017); *T. Rowe Price Group, Inc.* (avail. Jan. 17. 2018); *Eli Lilly and Company* (avail. Jan. 8, 2018); *Windstream Holdings* (avail. Feb. 14, 2017); *Medivation, Inc.* (avail. Mar. 13, 2015); *NETGEAR, Inc.* (avail. Mar. 31, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson Johnson* (avail. Feb. 19, 2008); *Hewlett-Packard Co.* (avail. Dec. 11, 2007); *General Motors Corp.* (avail. Mar. 3, 2004); and *Intel Corp.* (avail. Mar. 11, 2003) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10 because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

Accordingly, the Company believes that once the Board takes the actions described above, the Proposal will have been substantially implemented and may be excluded under Rule 14a-8(i)(10).

The Proposal May Be Excluded under Rule 14a-8(i)(7) Because It Relates to the Company's Ordinary Business Operations.

Rule 14a-8(i)(7) permits a company to omit a shareholder proposal from its proxy materials if it deals with a matter relating to the company's ordinary business operations. The Commission explained that the general policy underlying the "ordinary business" exclusion 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." Exchange Act Release No. 34-40018 May 21, 1998 the "1998 Release"). As clarified by the Commission, the term "ordinary business operations" in Rule 14a-8(i)(7) "refers to matters that are not necessarily 'ordinary' in the common meaning of the word"; rather, the term is "rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id*. The Commission further explained in the 1998 Release that there are two central considerations underlying this general policy: (1) "[certain] tasks 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"; and (2) the "degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

The Staff has consistently permitted the exclusion of shareholder proposals under Rule 14a-8(i)(7) as relating to a company's ordinary course of business if such proposals seek to oversee the conduct of a company's annual meeting. *USA Technologies, Inc.* (avail. Mar. 11, 2016) (concurring in the omission of a proposal under Rule 14a-8(i)(7) that sought a bylaw amendment to include rules of conduct at all meetings of shareholders and set forth detailed rules of conduct for such meetings as "relat[ing] to the conduct of shareholder meetings"); *Servotronics, Inc.* (avail. Feb. 19, 2015) (permitting the exclusion of a proposal that requested a question-and-answer period to be included in conjunction with the company's annual shareholder meetings as relating to the company's ordinary business operations because "proposals concerning the conduct of shareholder meetings generally are excludable under Rule 14a-8(i)(7)"); *Mattel, Inc.* (avail. Jan. 14, 2014) (allowing the exclusion of a proposal requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the Annual Meeting" on ordinary course of business grounds); *Citigroup Inc.* (avail. Feb. 7, 2013) (concurring in the omission of a proposal requesting a "reasonable amount of time before and after the annual meeting for shareholder dialogue with directors"); *Bank of America Corp.* (avail. Dec. 22, 2009) (allowing the exclusion of a proposal recommending that all shareholders be entitled to attend and speak at all annual meetings on ordinary course of business grounds); and *Exxon Mobil Corp.* (avail. Mar. 2, 2005) (concurring in the omission of a proposal seeking to set time aside at

each annual meeting for shareholders to ask questions and receive replies from non-employee directors).

The Proposal requests "taking the steps necessary to adjourn the annual meeting to solicit votes necessary for approval," but the decision of whether and when a board of directors should adjourn an annual meeting to solicit additional proxies is precisely the type of decision that is fundamental to the Board's and management's ability to run the Company and that probes into matters of a complex nature that the Board and management are in the best position to address. Whether to adjourn a meeting to solicit additional proxies involves a complex determination, and in making such a decision, management and the Board must weigh, among other things, the time and expense that would be required to adjourn and reconvene an annual meeting, shareholder reaction to the proposal and/or adjournment, the potentiality for shareholder confusion, and the likelihood of sufficient additional proxies being solicited during any such adjournment. Adjourning a meeting to solicit additional proxies is exactly the type of decision that the Board and management are better equipped to make after considering and weighing all applicable factors as they arise in real time. The Board and management are best positioned to make an informed judgment about how the annual meeting should be conducted, including if and when any adjournments should be called and, if they are called, the applicable length and other details of implementation. The Staff has repeatedly permitted exclusions of analogous shareholder proposals to require in-person annual meetings or meetings to be held in specific locations, on similar grounds. *See, e.g., Alaska Air Group, Inc.* (avail. Jan. 25, 2017) (concurring in the omission of a proposal to adopt a corporate governance policy to restore in-person annual meetings ; *EMC Corp.* (avail. Mar. 7, 2002) (concurring in the omission of a proposal to adopt a corporate governance policy affirming the continuation of in-person annual meetings); and *Ford Motor Co.* (avail. Jan. 2, 2008) (concurring in the omission of a proposal requiring that the company hold its annual meeting in the Dearborn, Michigan area since the proposal related to the company's ordinary business operations). The Proposal, like proposals that seek to dictate the manner or location of an annual meeting, seeks to micro-manage the Company's actions at an annual meeting on a matter on which the Company's management is best positioned to make an informed decision.

Accordingly, the Company believes the Proposal, which seeks to oversee the conduct of a company's annual meeting, relates to the Company's ordinary business operations and may be excluded under Rule 14a-8(i)(7).

The Proposal May Be Excluded under Rule 14a-8(i)(3) Because It Is Impermissibly Vague and Indefinite.

A. Rule 14a-8(i)(3) Background

Rule 14a-8(i)(3) permits a company to exclude a shareholder proposal if such proposal is contrary to the Commission's proxy rules. The Staff has consistently found that vague and

indefinite shareholder proposals contravene the Commission's proxy rules because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (September 15, 2004). In particular, the Staff has explained that a proposal subject to multiple, conflicting interpretations is excludable under Rule 14a-8(i)(3) because the company and shareholders may interpret such proposal differently, possibly resulting in a company taking actions that are unlike what shareholders envisioned in passing such proposal. *See, e.g.*, *Walgreens Boots Alliance, Inc.* (avail. Oct. 7, 2016); *United Continental Holdings* (avail. Mar. 6, 2014); *Morgan Stanley* (avail. Mar. 12, 2013); *The Boeing Co.* (avail. Mar. 2, 2011); *AT&T Inc.* (avail. Feb. 16, 2010); *Prudential Financial, Inc.* (avail. Feb. 2007); *Norfolk Southern Corp.* (avail. Feb. 13, 2003); *Capital One Financial Corp.* (Feb. 7, 2003); and *Fuqua Industries, Inc.* (avail. Mar. 12, 1991).

B. The Proposal and the Actions Required to Implement It Are Not Determinable with Reasonable Certainty

The Staff has permitted the exclusion of shareholder proposals where the proposal failed to define key terms or otherwise failed to provide necessary guidance on its implementation. In these circumstances, because neither the company nor its shareholders would be able to determine with any reasonable certainty what actions or measures the proposal would require, the Staff concurred that such proposals were impermissibly vague, indefinite and therefore excludable under Rule 14a-8(i)(3). *See, e.g.*, *AT&T Inc.* (avail. Feb. 21, 2014) (permitting exclusion of a proposal requesting that the board review the company's policies and procedures relating to the "directors' moral, ethical and legal fiduciary duties and opportunities" to ensure the protection of privacy rights, where the proposal did not describe or define the meaning of "moral, ethical and legal fiduciary"); *Moody's Corp.* (avail. Feb. 10, 2014) (permitting exclusion of a proposal requesting that the board report on its assessment of the feasibility and relevance of incorporating "ESG risk assessments" into all of the company's credit rating methodologies, where the proposal did not define "ESG risk assessments"); and *Morgan Stanley* (avail. Mar. 12, 2013) (concurring with the omission of a proposal that requested the appointment of a committee to explore "extraordinary transactions" as vague and indefinite).

The Proposal suffers from a similar defect. The portion of the Proposal that includes "taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting," is vague, indefinite and subject to multiple interpretations, providing no reasonable certainty as to, among other things, exactly what steps would be considered necessary to solicit votes, whether the meeting should be adjourned in all cases where votes were lacking (or only when determined to be reasonably close to passage), for how long the meeting would need to be adjourned, how many times the

meeting would need to be adjourned, or what specific action would be voted on by the shareholders.[1]

The Staff has concurred in the exclusion of proposals under Rule 14a-8(i)(3) when the "meaning and application of terms and conditions…in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation could be significantly different from the actions envisioned by shareholders voting on the proposal." *Fuqua Industries, Inc.* (avail. Mar. 12, 1991). *See also Berkshire Hathaway Inc.* (avail. Mar. 2, 2007) (permitting the exclusion of a proposal restricting the company from investing in securities of any foreign corporation that engages in activities prohibited for U.S. corporations by executive order because the proposal did not adequately disclose to shareholders the extent to which the proposal would operate to bar investment in all foreign corporations) and *Pfizer Inc.* (avail. Dec. 22, 2014) (concurring with the exclusion of a proposal where the action taken to implement the proposal could be significantly different from the actions envisioned by shareholders).

The vagueness of the Proposal's language is such that a plausible interpretation would be that "votes for approval" are "lacking" when a quorum is not present and that the meeting should be adjourned until a quorum is established. An alternative interpretation of the Proposal could result in the Company repeatedly adjourning its annual meeting and soliciting additional votes for indefinite periods of time if, for example, the shareholders were being asked to vote on a matter that requires a majority vote for approval and a majority of all shareholders have voted against it. In addition, the Proposal does not address (i) the length of the envisioned adjournment(s) (which could be interpreted by some shareholders as minutes or hours and by others as days, weeks or longer), (ii) what the Company should do if, despite its efforts, the

[1] Moreover, in its review of registration statements filed in connection with transactions requiring shareholder approval, the Staff has previously requested that, in instances where a company requests a separate vote to adjourn the applicable shareholder meeting to solicit additional proxies for approval of a transaction, the registrant provide a separate box for such vote so that shareholders may decide whether or not to vote in favor of the adjournment. *See*, *e.g.*, Comment 59 to *Pyxis Tankers Inc.* (avail. May 20, 2015 (instructing the registrant contemplating a separate vote to adjourn the meeting to permit solicitation of additional proxies for approval of a transaction to include a separate box for such contemplated action). Rule 14a-4(b)(1) requires such approach, which provides that proxies afford the person solicited "an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to *each separate matter* referred to therein as intended to be acted upon [emphasis added]." Such an approach suggests that adjournment to solicit proxies should, in it of itself, be considered its own proposal, separate and apart from any other proposal. Rule 14a-8(c requires that a shareholder submit no more than one proposal to a company for a particular meeting of shareholders.

Here, the Proposal, in fact, appears to consist of two, distinct proposals: one relating to the removal of supermajority vote requirements from the Certificate of Incorporation and, although inapplicable, the Bylaws, and another relating to the adjournment of a meeting of shareholders to solicit additional proxies. Although we are not seeking to exclude the Proposal on the basis of Rule 14a-8 c), we do believe it would be appropriate, in the event that the Staff does not concur with the Company's exclusion of the Proposal on the basis of the reasons set forth elsewhere in this letter, for the Staff to direct the Proponent to cure the aforementioned defect by moving the meeting adjournment related request to his supporting statement.

"votes necessary for approval" remain "lacking" after an extended period of time or (iii) what steps the Company should take to solicit the additional votes during the undefined period of adjournment. Because of the vague and indefinite nature of the Proposal, shareholders would not be able to discern what exactly they would be voting on or what would be required to implement it.

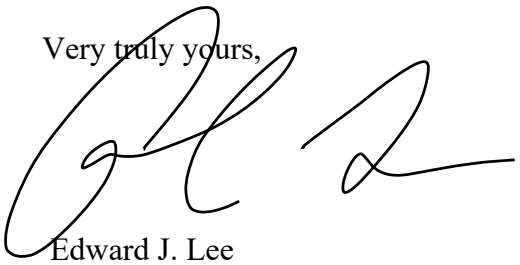
Accordingly, the Company believes that the Proposal may be excluded under Rule 14a-8(i)(3).

CONCLUSION

Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(10), subject to confirmation of the Board's adoption of resolutions approving the Certificate Amendment; Rule 14a-8(i)(7); and Rule 14a-(8)(i)(3). Importantly, if the Staff concurs with the Company's exclusion of the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(7) and Rule 14a-8(i)(3), as described above, the Board nevertheless intends to consider the Certificate Amendment at the February Board Meeting and, if approved by the Board, the Board intends to authorize management to include the proposed change in the 2019 Proxy Materials and recommend that the shareholders vote to approve the Certificate Amendment at the 2019 Annual Meeting.

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussion, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of any written response to this letter. Please do not hesitate to contact the undersigned at (212) 403-1155 or EJLee@wlrk.com or Joshua R. Cammaker at (212) 403-1331 or JRCammaker@wlrk.com.

Very truly yours,



Edward J. Lee

cc: John Chevedden
Peter J. Graber-Lipperman, United Technologies Corporation
Joshua R. Cammaker, Wachtell, Lipton, Rosen & Katz

Exhibit A

***

From:
Sent: Monday, November 12, 2018 10:48 AM
To: Graber-Lipperman, Peter J UTCHQ <Peter.Graber-Lipperman@utc.com>; GP UTCHQ Corp Secretary's Office <CORPSEC@CORPHQ.UTC.COM>
Subject: [External] Rule 14a-8 Proposal (UTX)``

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

John Chevedden
***

Mr. Peter Graber-Lipperman
Corporate Secretary
United Technologies Corporation (UTX)
10 Farm Springs Road
Farmington, CT 06032
PH: 860-728-7000

Dear Mr. Graber-Lipperman,

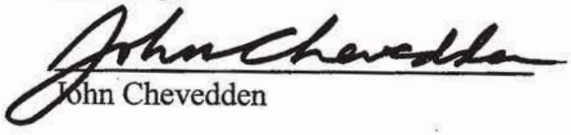
This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

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

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

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

Sincerely,



John Chevedden

November 12, 2018
Date

cc: Peter Graber-Lipperman <corpsec@corphq.utc.com
Eva DeVito <corpsec@corphq.utc.com

[UTX: Rule 14a-8 Proposal, November 12, 2018]
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn is mentioned 25-times in our bylaws. This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had equal access to independent proxy voting advice. Currently a 1%-minority can frustrate the will of our 79%-shareholder majority on certain issues in an election in which 80% of shares cast ballots.

The 2018 management proposal on this same topic received positive votes by an overwhelming 100-to-one margin. Ellen Kullman, the Chair of our governance committee, could see the votes coming in at a overwhelming 100-to-one ratio and yet did not do enough to make sure that a few more votes came in order for the management proposal to avoid failure.

How does Ms. Kullman explain a management ballot failure on a proposal where the positive votes outnumbered the negative votes by a 100-to-one margin? Ms. Kullman is also our Lead Director and served on the Boards of Amgen, Goldman Sachs and Dell Technologies. Thus it is important to hear a short and clear explanation from Ms. Kullman that does not hide behind an all too frequent boring, long-winded management explanation.

Please vote yes:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

Notes:
John Chevedden, *** sponsored this proposal.

Proposal [4] – Means [4] is the placeholder for the company to assign the number in the proxy.

Please note that the title of the proposal is part of the proposal. In the interest of clarity and to avoid confusion the title of this and each other ballot item is requested to be consistent throughout all the proxy materials.

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).

Stock 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: Graber-Lipperman, Peter J. (United Technologies Corporation)
Sent: Friday, November 30, 2018 2:15 PM
To: ***
Cc: DeVito, Eva (United Technologies Corporation)
Subject: UTC - Rule 14a-8 Proposal (UTX)" - Simple Majority Vote
Attachments: CCE12112018.pdf; Chevedden 2018 Simple Majority Vote.pdf

Mr. Chevedden:

I write in regard to your Simple Majority Vote proposal submitted to UTC for incorporation in the 2019 Proxy Statement (attached above for reference). Specifically, I would like to provide you with some facts and figures that hopefully address your concern that UTC "did not do enough to make sure a few more votes came in order for the management proposal to avoid failure."

- By way of background, UTC's shareholder base is roughly comprised of institutional holders (75%) and retail/registered holders (25%). The overwhelming majority of shares held by institutions (97%+) are usually voted at the annual meeting, while a very low percentage of the shares held by retail/registered holders tends to be voted. This experience is not unique to UTC, and much has been written over the past few years by academics and governance advisors about the decline in retail shareholder voting. Given our ownership base and historic voting patterns of institutional and retail/registered shareholders, efforts to increase total shares voted at the annual meeting to the 80% level have to be focused on registered/retail shareholders.

- In fact, the total shares voted as a percentage of shares outstanding at UTC during the period 2012-2018 on all proposals submitted to the shareowners has never hit or exceeded the 80% level. That includes the 2013 Annual Meeting, where management mailed an additional solicitation to shareowners (as you pointed out in your letter to the SEC staff attached above). While the 2013 solicitation may have contributed to an increase in support for the executive compensation proposal versus the prior year (from 61% to 90% as you point out in your letter), the "For" votes for that proposal only represented 70% of the total shares outstanding (as reflected in the attachment to your letter). This is still far short of the 80% requirement for removing Article Ninth from the Certificate of Incorporation.

- Given this history, UTC knew that obtaining 80% support of the total shares outstanding for the management proposal to remove Article Ninth from the Certificate of Incorporation was a very high bar and took actions aimed at increase voting by retail/registered shareholders for the 2018 Annual Meeting. The company sent full proxy packages (Proxy Statement, Annual Report, Proxy Card) to 51,000 registered/beneficial account holders representing about 82.6 million shares. In past years, UTC utilized Notice & Access for these accounts to save costs and reduce paper utilization, but sent full packages based on the advice of Broadridge that these shareholders were more likely to vote if they received paper copies of the proxy materials. UTC also followed up by sending a solicitation letter via FedEx to 61 large registered/retail account holders representing approximately 28 million shares.

- In the end, approximately 611.2 million shares were voted in favor of removing Article Ninth. This equates to about 76% of the shares of UTC common stock outstanding as of the record date for the Annual Meeting.

- By way of comparison, the total votes cast on the other management proposals in the 2018 Proxy Statement, including executive compensation, were also in the range of 75% - 78% of the shares of UTC common stock outstanding.

- And, the overall 76% turnout for the 2018 management proposal to remove Article Ninth exceeded the overall 70% turnout in favor of the 2013 executive compensation proposal you highlighted in your letter to the SEC staff.

UTC shares the view that any provision requiring more than a majority vote should be changed or removed from our governance documents. We only have one – Article Ninth of the Certificate of Incorporation – and the Company made a good faith effort at significant expense to obtain shareholder approval to remove it in 2018. I will dutifully share with the Board any plans you have

to obtain 80% support from the total shares outstanding for your Simple Majority Vote proposal if it is included in the 2019 Proxy Statement in lieu of a management proposal, including actions you will take to round up more votes during an adjournment of the Annual Meeting for that purpose.

V/R,

Peter J. Graber-Lipperman
Corporate Vice President, Secretary & Associate General Counsel
United Technologies Corporation
10 Farm Springs
Farmington, CT 06032-2568
860.728.7892 (office)
peter.graber-lipperman@utc.com

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JOHN CHEVEDDEN

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February 13, 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
United Technologies Corporation (UTX)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request and the board's no commitment approval of a shareholder vote.

The board made no commitment to obtain the necessary 80% vote on its just announced proposal and implicitly claims that it can give as much attention to approval of the board proposal as it will give to the 2018 ratification of its auditors.

This is in contrast to what the company can do in obtaining a vote if it wants to. In the span of a year the company increased the approval of its executive pay from 61% to 90% in part through the use of the attached special solicitation – but no such luck in regard to the board's low priority proposal just announced.

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: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

Proposal: Advisory Vote on Executive Compensation

Proponent:

Proxy Year: 2012
Date Filed: Feb 24, 2012
Annual Meeting Date: Apr 11, 2012
Proposal Type: Management

Votes For: 421,352,984
Votes Against: 269,610,948
Abstentions: 12,146,951
Total Votes: 703,110,883
Broker Non-Votes: 83,282,793

Won Simple Majority Vote? No
VotesFor/VotesFor+Against: 61.00%
VotesFor/TotalVotes: 61.65%
VotesFor/Shares Outstanding: 46.29%

61%

Proposal: Advisory Vote on Executive Compensation

Proponent:

Proxy Year: 2013
Date Filed: Mar 15, 2013
Annual Meeting Date: Apr 29, 2013
Proposal Type: Management

Votes For: 644,664,942
Votes Against: 70,017,265
Abstentions: 7,751,302
Total Votes: 722,433,509
Broker Non-Votes: 80,272,721

Won Simple Majority Vote? No
VotesFor/VotesFor+Against: 90.00%
VotesFor/TotalVotes: 90.31%
VotesFor/Shares Outstanding: 70.20%

90%

United Technologies Corporation
One Financial Plaza
Hartford, CT 06101

United Technologies

April 9, 2013

Dear Shareowner,

The 2013 Annual Meeting of Shareowners of United Technologies Corporation will take place on April 29. By now, you should have received UTC's 2013 Proxy Statement,* which contains information about the **three proposals** that shareowners are being asked to vote on at this year's meeting. If you have already cast your vote, thank you very much for your participation. **If you have not yet had the opportunity to vote, we encourage you to review the Proxy Statement and to vote your UTC shares as soon as possible.**

You can vote by completing and mailing back the enclosed voting card, or you can vote by telephone or online by following the instructions on the enclosed voting card.

UTC's Board of Directors is recommending that you vote FOR all three proposals on this year's agenda.

Proposal 1 asks for your support in electing the twelve director nominees named in the Proxy Statement. *Please see pages 1 through 8 in the Proxy Statement for information on the experience and qualifications of each nominee.*

As you consider these director nominees, please take into account UTC's recent and longer-term performance. Under the oversight of the Board of Directors, UTC has achieved solid earnings and shareowner value while also executing strategic initiatives intended to build long-term sustainable growth. For 2012, UTC reported diluted earnings per share from continuing operations of $5.35 on net sales of $57.7 billion combined with strong cash flow performance *(please see pages 21-24 of the Proxy Statement for a discussion of UTC's financial performance)*. UTC increased the Common Stock dividend 11.5%. *2012 marks the 76th consecutive year that UTC shareowners have received dividends on their shares.* We achieved this financial performance in the same year that UTC completed the $18.3 billion acquisition of Goodrich Corporation, the largest aerospace acquisition ever. The Company believes this acquisition significantly enhances UTC's reach in the aerospace market and increases the opportunity for growth.

As a shareowner, you may be particularly pleased to know that UTC's total shareowner return (TSR) for 2012 was 15%, substantially exceeding the TSR for the Dow Jones Industrials (10%) and slightly below the TSR for the S&P 500 (16%). For the ten-year period ending on December 31, 2012, UTC's cumulative TSR was 225%, more than double either the Dow Jones Industrials or the S&P 500.

By voting to elect the current nominees, you will help ensure that UTC's Board continues to have the right mix of experience and qualifications to meet the challenges of tomorrow.

* UTC's **2013 Proxy Statement** and **Annual Report** for 2012 are both available online at www.proxyvote.com.

2012 Earnings per share from continuing operations:

$5.35

Proposal 2 asks you to support the appointment of PricewaterhouseCoopers LLP as independent auditor for 2013. The Audit Committee of the Board believes that PricewaterhouseCoopers has experience and insight into the Company's operations and systems that enhance their ability to discharge the important function of independent audit review. *Please see page 65 of the Proxy Statement for details on this proposal.*

Proposal 3 asks you to approve, on an advisory basis, the compensation of UTC's named executive officers. We believe UTC's strong financial and TSR performance, discussed above, reflect the steady focus of the Board's Committee on Compensation on the goal of aligning UTC's compensation strategies with shareowner interests. UTC's compensation program has also enabled the Company to attract and retain highly talented executives. Shareowners should know that the Compensation Committee keeps abreast of important trends and benchmarks relating to executive compensation and updates UTC's compensation program when appropriate. In fact, during 2012 the Committee modified UTC's compensation strategies in a number of significant ways to ensure that the Company is following best practices and to further enhance the alignment of UTC's compensation program with the interests of UTC shareowners. *Please see pages 21-51 of the Proxy Statement to learn more about these changes.*

Based on the important compensation changes that UTC implemented in 2012, and its proven track record of adopting effective executive compensation strategies and creating long-term value for shareowners, the Board recommends that you vote FOR Proposal 3.

YOUR VOTE IS VERY IMPORTANT. PLEASE SUBMIT YOUR PROXY OR VOTING INSTRUCTIONS AS SOON AS POSSIBLE, WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING.

Sincerely yours,

Louis R. Chênevert
Chairman & Chief Executive Officer

2012
Sales from
continuing
operations:

$57.7 billion

Acquired
Goodrich
Corporation:

$18.3 billion

From: ***
Date: December 3, 2018 at 6:09:28 PM EST
To: PeterGraber-Lipperman <Peter.Graber-Lipperman@utc.com>
Subject: [External] Rule 14a-8 Proposal (UTX) - Simple Majority Vote

Mr. Graber-Lipperman,
Thank you for your detailed message.
It would be interesting to see how a new proxy solicitor would respond to these details.
John Chevedden

From: Graber-Lipperman, Peter J UTCHQ
Sent: Friday, December 14, 2018 4:42 PM
To: ***
Cc: DeVito, Eva A UTCHQ <Eva.DeVito@utc.com>
Subject: FW: Rule 14a-8 Proposal (UTX) - Simple Majority Vote

Mr. Chevedden:

Thank you for your note below.

I am following up on my prior note of November 30, 2018. We reviewed your Simple Majority Vote proposal (attached) with the UTC Board of Directors earlier this week. The Board noted that there is only one supermajority voting provision in the UTC Certificate of Incorporation ("Certificate") and/or UTC Bylaws, namely, Article Ninth of the Certificate. The Board also noted your suggestion regarding a new proxy solicitor, and considered the company's prior efforts to obtain the required shareowner approval to eliminate Article Ninth from the Certificate. After deliberations, the Board once again determined that it is advisable and in the best interests of the shareowners to eliminate Article Ninth from the Certificate for the same reasons as set forth in the supporting statement for Proposal 5 in the 2018 Proxy Statement. As a result, both the Governance & Public Policy Committee of the Board and the full Board will consider at their next regularly scheduled meetings to be held in early February 2019 resolutions to amend the Certificate to eliminate Article Ninth in its entirety. At that time, the Board will also consider the retention of a proxy solicitor and/or additional proxy solicitation efforts. If the Board adopts the foregoing resolutions, then the proposed amendment to the Certificate will be submitted to UTC's shareholders for their approval at the 2019 Annual Meeting.

The Company believes that the anticipated Board action described above would substantially implement your proposal. If you do not wish to withdraw your proposal at this time, then the Company will submit a request for No Action Letter prior to the deadline for doing so later this month. I will follow up with you after the February 2019 meeting should the Board adopt and recommend that the shareowners approve an amendment deleting Article Ninth from the Certificate of Incorporation at the 2019 Annual Meeting.

As always, thank you for your investment in UTC and your interest in the affairs of the Company.

Very truly yours,

Peter J. Graber-Lipperman
Corporate Vice President, Secretary & Associate General Counsel
United Technologies Corporation
10 Farm Springs
Farmington, CT 06032-2568

860.728.7892 (office)
peter.graber-lipperman@utc.com

From: ***
Date: December 14, 2018 at 11:42:59 PM EST
To: "Graber-Lipperman, Peter J UTCHQ" <Peter.Graber-Lipperman@utc.com>
Subject: [External] Rule 14a-8 Proposal (UTX) - Simple Majority Vote

Mr. Graber-Lipperman,
Thank you for the update.
I hope the Board of Directors is successful in 2019.
Sincerely,
John Chevedden

Exhibit B

(CONFORMED COPY)

UNITED TECHNOLOGIES CORPORATION

Restated
Certificate of Incorporation

~~April 25, 2016~~
[●], 2019

RESTATED

CERTIFICATE OF INCORPORATION

of

UNITED TECHNOLOGIES CORPORATION

Pursuant to Section 245

of the General Corporation Law

of the State of Delaware

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Original Certificate of Incorporation filed

with the Secretary of State

of the State of Delaware

on July 21, 1934,

under the name

United Aircraft Corporation

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FIRST: The name of the Corporation is UNITED TECHNOLOGIES CORPORATION.

SECOND: Its registered office or place of business in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent is The Corporation Trust Company and the address of the said registered agent is Corporation Trust Center, 1209 Orange Street, in the said City of Wilmington.

THIRD: The nature of the business, or objects or purposes to be transacted, promoted or carried on, are those necessary to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock of all classes which the Corporation shall have authority to issue is 4,250,000,000 shares, of which 250,000,000 shares shall be Preferred Stock of the par value of $1.00 each (hereinafter called "Preferred Stock") and 4,000,000,000 shares shall be Common Stock of the par value of $1.00 each (hereinafter called "Common Stock").

The designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the shares of each class are as follows:

1. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed herein or in the resolution or resolutions providing for the issue of such series, adopted by the Board of Directors as hereinafter provided.

2. Authority is hereby expressly granted to the Board of Directors of the Corporation, subject to the provisions of this Article Fourth and to the limitations prescribed by law, to authorize the issue of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or noncumulative.

(c) Whether the shares of such series shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) Whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of stock of the

Corporation, and, if provision be made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange.

(f) The extent, if any, to which the holders of the shares of such series shall be entitled to vote with respect to the election of directors or otherwise.

(g) The restrictions, if any, on the issue or reissue or any additional Preferred Stock.

(h) The rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

3. Except as otherwise required by law and except for such voting powers with respect to the election of directors or other matters as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, the holders of any such series shall have no voting power whatsoever. Subject to such restrictions as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, any amendment to the Certificate of Incorporation which shall increase or decrease the authorized stock of any class or classes may be adopted by the affirmative vote of the holders of a majority of the outstanding shares of the voting stock of the Corporation.

4. No holder of stock of any class of the Corporation shall as such holder have any preemptive or preferential right of subscription to any stock of any class of the Corporation or to any obligations convertible into stock of the Corporation, issued or sold, or to any right of subscription to, or to any warrant or option for the purchase of any thereof, other than such (if any) as the Board of Directors of the Corporation, in its discretion, may determine from time to time.

5. The Corporation may from time to time issue and dispose of any of the authorized and unissued shares of Common Stock or of Preferred Stock for such consideration, not less than its par value, as may be fixed from time to time by the Board of Directors, without action by the stockholders. The Board of Directors may provide for payment therefor to be received by the Corporation in cash, property or services. Any and all such shares of the Preferred or Common Stock of the Corporation the issuance of which has been so authorized, and for which consideration so fixed by the Board of Directors has been paid or delivered, shall be deemed full paid stock and shall not be liable to any further call or assessment thereon.

FIFTH: The minimum amount of capital with which the Corporation will commence business is One Thousand Dollars.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of corporate debts.

EIGHTH: Subject to the provisions of the laws of the State of Delaware, the following provisions are adopted for the management of the business and for the conduct of the affairs of the Corporation, and for defining, limiting and regulating the powers of the Corporation, the directors and the stockholders:

(a) The books of the Corporation may be kept outside the State of Delaware at such place or places as may, from time to time, be designated by the Board of Directors.

(b) The business of the Corporation shall be managed by its Board of Directors; and the Board of Directors shall have power to exercise all the powers of the Corporation, including (but without limiting the generality hereof) the power to create mortgages upon the whole or any part of the property of the Corporation, real or personal, without any action of or by the stockholders, except as otherwise provided by statute or by the Bylaws.

(c) The number of the directors shall be fixed by the Bylaws, subject to alteration, from time to time, by amendment of the Bylaws either by the Board of Directors or the stockholders. An increase in the number of directors shall be deemed to create vacancies in the Board, to be filled in the manner provided in the Bylaws. Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time, in such manner as shall be provided in the Bylaws.

(d) The Board of Directors shall have power to make and alter Bylaws, subject to such restrictions upon the exercise of such power as may be imposed by the incorporators or the stockholders in any Bylaws adopted by them from time to time.

(e) The Board of Directors shall have power, in its discretion, to fix, determine and vary, from time to time, the amount to be retained as surplus and the amount or amounts to be set apart out of any of the funds of the Corporation available for dividends as working capital or a reserve or reserves for any proper purpose, and to abolish any such reserve in the manner in which it was created.

(f) The Board of Directors shall have power, in its discretion, from time to time, to determine whether and to what extent and at what times and places and under what conditions and regulations the books and accounts of the Corporation, or any of them, other than the stock ledger, shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by law or authorized by resolution of the directors or of the stockholders.

(g) Upon any sale, exchange or other disposal of the property and/or assets of the Corporation, payment therefor may be made either to the Corporation or directly to the stockholders in proportion to their interests, upon the surrender of their respective stock certificates, or otherwise, as the Board of Directors may determine.

(h) [Reserved].

(i) In case the Corporation shall enter into any contract or transact any business with one or more of its directors, or with any firm of which any director is a member, or with any corporation or association of which any director is a stockholder, director or officer, such contract or transaction shall not be invalidated or in any way affected by the fact that such director has or may have an interest therein which is or might be adverse to the interests of the Corporation, even though the vote of such director might have been necessary to obligate the Corporation upon such contract or transaction; provided, that the fact of such interest shall have been disclosed to the other directors or the stockholders of the Corporation, as the case may be, acting upon or with reference to such contract or transaction.

(j) Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this

Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

(k) The Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute; and all rights herein conferred are granted subject to this reservation.

NINTH~~: The stockholder vote required to approve Business Combinations (hereinafter defined) shall be as set forth in this Article Ninth.~~

~~SECTION 1. Higher Vote for Business Combinations. In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section 3 of this Article Ninth:~~

~~A. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or~~

~~B. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of $25,000,000 or more; or~~

~~C. the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of $25,000,000 or more; or~~

~~D. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or~~

~~E. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder;~~

~~shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article Ninth, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Fourth of this~~

Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

SECTION 2. Definition of "Business Combination". The term "Business Combination" as used in this Article Ninth shall mean any transaction which is referred to in any one or more of paragraphs A through E of Section 1.

SECTION 3. When Higher Vote is Not Required. The provisions of Section 1 of this Article Ninth shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their capacities as stockholders, the condition specified in the following paragraph A is met, or if in the case of any other Business Combination, the conditions specified in either of the following paragraphs A or B are met:

A. Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

B. Price and Procedure Requirements. All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination (the "Consummation Date") of the consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be an amount at least equal to the higher of the following (it being intended that the requirements of this paragraph B(i) shall be required to be met with respect to all shares of Common Stock outstanding, whether or not the Interested Stockholder has previously acquired any shares of the Common Stock):

(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of Common Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of Common Stock; or

(b) the Fair Market Value per share of Common Stock on the Announcement Date.

(ii) The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of the consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock, other than the Common Stock, in such Business Combination shall be an amount at least equal to the highest of the following (it being intended that the requirements of this paragraph B (ii) shall be required to be met with respect to all shares of every such other class of

outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(a) the highest per-share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of such class of Voting Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of such class of Voting Stock;

(b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date; or

(c) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations

thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

SECTION 4. Certain Definitions. For the purposes of this Article Ninth:

A. A "person" shall mean any individual, firm, corporation or other entity.

B. "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary) who or which:

(i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

C. A person shall be a "beneficial owner" of any Voting Stock:

(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

D. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Section 4, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Section 4 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

E. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1983.

F. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph B of this Section 4, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

G. "Disinterested Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.

H. "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.

I. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in paragraph B(i) and (ii) of Section 3 of this Article Ninth shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

SECTION 5. Powers of Disinterested Directors . A majority of the Disinterested Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article Ninth, including without limitation (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph B of Section 3 have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of $25,000,000 or more; and the good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all the purposes of this Article Ninth.

SECTION 6. No effect on Fiduciary Obligations of Interested Stockholders. Nothing contained in this Article Ninth shall be construed to relieve the Board of Directors or any Interested Stockholder from any fiduciary obligation imposed by law.

SECTION 7. Amendment, Repeal, etc Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the voting power of the shares of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with,

~~this Article Ninth of this Certificate of Incorporation; provided, however, that the preceding provisions of this Section 7 shall not be applicable to any amendment to this Article Ninth of this Certificate of Incorporation, and such amendment shall require only such affirmative vote as is required by law and any other provisions of this Certificate of Incorporation, if such amendment shall have been approved by a majority of the Disinterested Directors.TENTH~~: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law for payment of unlawful dividends or unlawful stock repurchases or redemption, or (iv) for any transaction from which the director derived an improper personal benefit.