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

DIVISION OF
CORPORATION FINANCE

August 7, 2019

Angela Hilt
The Clorox Company
angela.hilt@clorox.com

Re: The Clorox Company

Dear Ms. Hilt:

This letter is in regard to your correspondence dated August 6, 2019 concerning the shareholder proposal (the "Proposal") submitted to The Clorox Company (the "Company") by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its July 2, 2019 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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

cc: John Chevedden
***

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

THE CLOROX COMPANY

August 6, 2019

VIA E-MAIL

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

Re: *The Clorox Company*
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934—Rule 14a-8

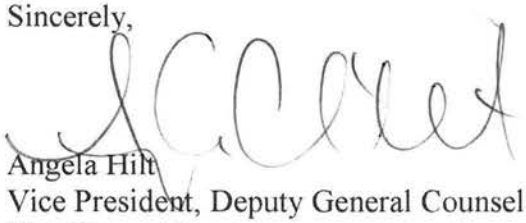
Ladies and Gentlemen:

In a letter dated July 2, 2019, The Clorox Company (the "Company") requested that the staff of the Division of Corporation Finance concur that the Company could exclude from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders a stockholder proposal (the "Proposal") and statements in support submitted on behalf of James McRitchie (the "Proponent") by John Chevedden (the "Proponent's Representative").

The Proponent's original cover letter, dated May 5, 2019, authorized the Proponent's Representative to act as the Proponent's "agent" with respect to the Proposal's "submission, negotiations and/or modification." Enclosed as Exhibit A is the following correspondence: (i) a July 21, 2019 email indicating the Proponent's Representative's withdrawal, which, however, did not refer to the Proposal; (ii) a July 22, 2019 reply email from the undersigned asking the Proponent's Representative to clarify that he was, in fact withdrawing the Proposal that was submitted to the Company; and (iii) a July 24, 2019 email from the Proponent's Representative verifying that the Proponent's Representative has withdrawn the Proposal. In reliance on these communications, the Company hereby withdraws the July 2, 2019 no-action request.

Please do not hesitate to call me at (510) 271-7021 or email me at angela.hilt@clorox.com.

Sincerely,



Angela Hilt
Vice President, Deputy General Counsel and Corporate Secretary
The Clorox Company

Enclosures

cc: Laura Stein, The Clorox Company
John Chevedden
James McRitchie

EXHIBIT A

From: " ***
Subject: #2 Rule 14a-8 Proposal `(CLX)
Date: 21 July 2019 11:39
To: "Office of Chief Counsel" <shareholderproposals@sec.gov>
Cc: "Angela Hilt" <Angela.Hilt@clorox.com>

[External Email - Email externo - 外部邮箱]

Withdrawn.
cc: James McRitchie

From: Angela Hilt
Sent: Monday, July 22, 2019 10:50 AM
To: *** >; Office of Chief Counsel <shareholderproposals@sec.gov>
Subject: RE: #2 Rule 14a-8 Proposal `(CLX)

Dear Mr. Chevedden,

I am following up on the email you sent to the Office of the Chief Counsel with a cc to me on July 21st. Would you please confirm that it is your intent to withdraw the stockholder proposal you submitted to The Clorox Company?

Many thanks,
Angela

Angela C. Hilt | Vice President - Corporate Secretary & Deputy General Counsel | The Clorox Company | W: 510-271-7021 | F: 510-208-2629 | angela.hilt@clorox.com

THE CLOROX COMPANY

From: *** [mailto: ***]
Sent: Sunday, July 21, 2019 11:39 AM
To: Office of Chief Counsel <shareholderproposals@sec.gov>
Cc: Angela Hilt <Angela.Hilt@clorox.com>
Subject: #2 Rule 14a-8 Proposal `(CLX)

Withdrawn.
cc: James McRitchie

From: *** [mailto: ***]
Sent: Wednesday, July 24, 2019 7:03 AM
To: Angela Hilt <Angela.Hilt@clorox.com>
Subject: RE: #2 Rule 14a-8 Proposal `(CLX)

The proposals is withdrawn.

ShareholderProposals

From: *** >
Sent: Sunday, July 21, 2019 2:39 PM
To: ShareholderProposals
Cc: Angela Hilt
Subject: #2 Rule 14a-8 Proposal `(CLX)

Withdrawn.
cc: James McRitchie

JOHN CHEVEDDEN

***

***

July 15, 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
The Clorox Co. (CLX)
Simple Majority Vote
James McRitchie

Ladies and Gentlemen:

This is in regard to the July 2, 2019 no-action request. The attached page from the July 3, 2018 no action request shows that this no action request is an almost exact copycat of the company 2018 no action request.

The attached 2019 Item 5.07 page shows that the company is hapless in obtaining even a 70% vote for its own directors in spite of its general special solicitation. Plus an 80% vote is needed for the proposal that the company wants to substitute for the rule 14a-8 proposal.

The attached 2018 Item 5.07 page shows that the 2018 company special solicitation was merely window dressing because the directors ended up getting less votes in 2018 with the "help" of a general special solicitation than they received in 2017 without a special solicitation.

The 2018 special solicitation was so half-hearted that it did not even ask the shareholders to vote for any particular item.

The attached "Overview of Vote Requirements at U.S Meetings" illustrates that many majority voted company proposals fail to pass:
https://corpgov.law.harvard.edu/2019/07/06/an-overview-of-vote-requirements-at-u-s-meetings/

This record of numerous failures is all the more reason to not to interfere with a rule 14a-8 proposal that will pass.

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: James McRitchie

Angela Hilt <Angela.Hilt@clorox.com>

On July 3, 2018, the Board adopted a resolution as follows:

1. Declaring advisable a proposal to eliminate the supermajority voting provisions from the Certificate of Incorporation by deleting the text of Article Six from the Certificate of Incorporation in its entirety (the "Proposed Certificate Amendment") and directing the Proposed Certificate Amendment's submission for stockholder approval and adoption at the Company's 2018 Meeting;

2. Recommending that stockholders vote for the approval of the Proposed Certificate Amendment at the Company's 2018 Meeting; and

3. Ratifying the Company's retention of a proxy solicitor to assist with the solicitation of proxies in connection with the Company's 2018 Meeting.

If the Proposed Certificate Amendment is approved by the Company's stockholders at the 2018 Meeting, the Company's governing documents will no longer include any supermajority provisions. The text of Article Six, which is proposed to be deleted in its entirety from the Certificate of Incorporation, subject to stockholder approval at the Company's 2018 Meeting, is attached to this letter as Exhibit B.

ANALYSIS

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. 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." *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner as set forth by the proponent. For instance, in *General Motors Corp.* (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the proposal had been satisfied. The company further argued that "[i]f the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice." To that end, the Staff has concurred that companies, when substantially implementing a stockholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the stockholder proponent would implement the proposal. *See General Electric Co.* (avail. Mar. 3, 2015) (concurring with exclusion of a proxy access

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

On November 14, 2018, The Clorox Company (the "Company") held its annual meeting of stockholders in Oakland, California. The matters voted on and the results of the vote were as follows:

1. The Company's stockholders elected the following directors to each serve until the next Annual Meeting of Stockholders or until a successor is duly elected and qualified.

	Number of Votes			
	For	Against	Abstain	Broker Non-Votes
Amy Banse	85,816,075	660,986	207,845	26,142,634
Richard H. Carmona	83,716,533	2,742,920	225,454	26,142,634
Benno Dorer	83,321,009	2,021,266	1,342,632	26,142,634
Spencer C. Fleischer	85,620,028	834,246	230,632	26,142,634
Esther Lee	85,763,392	717,010	204,504	26,142,634
A.D. David Mackay	86,124,790	328,847	231,270	26,142,634
Robert W. Matschullat	84,271,213	2,199,971	213,722	26,142,634
Matthew J. Shattock	86,119,336	325,804	239,767	26,142,634
Pamela Thomas-Graham	84,456,107	2,037,020	191,780	26,142,634
Carolyn M. Ticknor	83,495,032	2,996,709	193,165	26,142,634
Russell Weiner	85,505,783	941,659	237,464	26,142,634
Christopher J. Williams	85,527,598	923,950	233,358	26,142,634

2. The Company's stockholders voted for (on an advisory basis) the approval of the compensation of the Company's named executive officers.

Number of Votes			
For	Against	Abstain	Broker Non-Votes
80,584,973	5,330,744	769,021	26,142,802

3. The Company's stockholders ratified the selection of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending June 30, 2019.

Number of Votes			
For	Against	Abstain	Broker Non-Votes
110,800,203	1,657,448	369,889	0

4. The Company's stockholders did not approve the proposed amendment to the Company's Restated Certificate of Incorporation to eliminate the supermajority voting provision. Under the Company's Restated Certificate of Incorporation, the affirmative vote of at least 80% of the outstanding voting stock is required to approve this proposal. The 85,205,070 votes in favor of this proposal represented 66.73% of the total outstanding shares of common stock.

Number of Votes			
For	Against	Abstain	Broker Non-Votes
85,205,070	959,141	520,695	26,142,634

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

On November 15, 2017, The Clorox Company (the "Company") held its annual meeting of stockholders in Durham, North Carolina. The matters voted on and the results of the vote were as follows:

1. The Company's stockholders elected the following directors to each serve until the next Annual Meeting of Stockholders or until a successor is duly elected and qualified.

	Number of Votes			
	For	Against	Abstain	Broker Non-Votes
Amy Banse	86,777,057	622,373	186,768	26,353,275
Richard H. Carmona	85,125,304	2,267,526	193,367	26,353,275
Benno Dorer	84,538,264	1,609,119	1,438,815	26,353,275
Spencer C. Fleischer	86,679,147	699,189	207,862	26,353,275
Esther Lee	86,747,239	650,910	188,049	26,353,275
A.D. David Mackay	87,063,861	330,590	191,747	26,353,275
Robert W. Matschullat	86,246,699	1,137,346	202,152	26,353,275
Jeffrey Noddle	86,794,674	590,453	201,070	26,353,275
Pamela Thomas-Graham	86,638,721	753,117	194,360	26,353,275
Carolyn M. Ticknor	86,261,963	1,137,417	186,818	26,353,275
Russell Weiner	87,048,373	310,893	226,931	26,353,275
Christopher J. Williams	86,410,715	870,828	303,855	26,353,275

83 million in 2018

2. The Company's stockholders voted for (on an advisory basis) the approval of the compensation of the Company's named executive officers.

Number of Votes			
For	Against	Abstain	Broker Non-Votes
82,027,459	4,777,837	780,725	26,353,451

3. The Company's stockholders voted for (on an advisory basis) the option of one year as the frequency of future advisory votes on the compensation of the Company's named executive officers.

Number of Votes				
One Year	Two Years	Three Years	Abstain	Broker Non-Votes
77,014,261	429,111	9,829,614	313,035	26,353,451

4. The Company's stockholders ratified the selection of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending June 30, 2018.

Number of Votes			
For	Against	Abstain	Broker Non-Votes
112,521,026	1,042,174	376,273	0

Harvard Law School Forum on
Corporate Governance and Financial Regulation

An Overview of Vote Requirements at U.S. Meetings

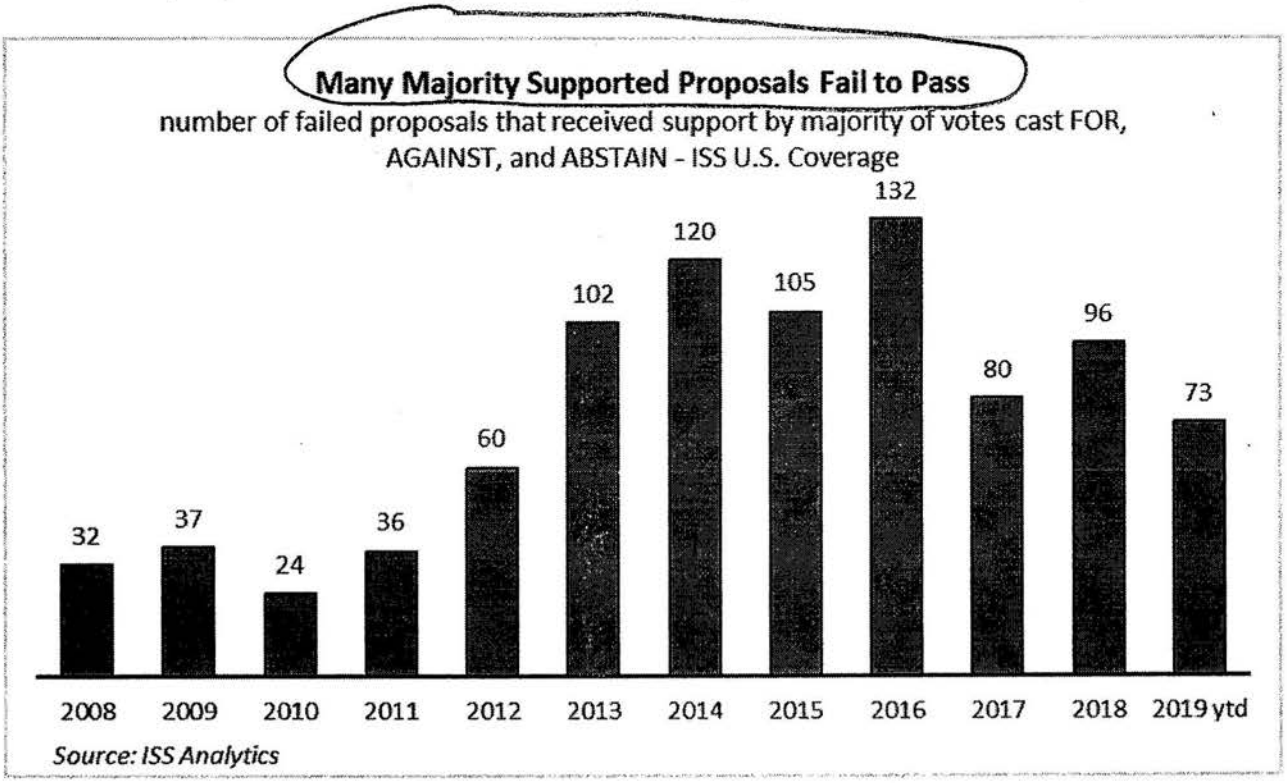
Posted by Kosmas Papadopoulos, ISS Analytics, on Saturday, July 6, 2019

Tags: Boards of Directors, Charter & bylaws, Dual-class stock, Institutional Investors, Majority voting, Ownership structure, Shareholder proposals, Shareholder voting
More from: Kosmas Papadopoulos, Institutional Shareholder Services Inc.

Editor's Note: Kosmas Papadopoulos is Managing Editor at ISS Analytics. This post is based on an ISS Analytics memorandum by Mr. Papadopoulos.

At the general meeting of Tesla Inc. on June 11, 2019, two management proposals seeking to introduce shareholder-friendly changes to the company's governance structure failed to pass, despite both items receiving support by more than 99.5 percent of votes cast at the meeting. To get official shareholder approval, the proposals needed support by at least two-thirds of the company's outstanding shares. However, only 52 percent of the company's share capital was represented at the general meeting; based on turnout alone, there was no possible way for the proposal to pass.

As strange as the voting outcome at Tesla may seem, it is not a very unusual result. Every year, dozens of proposals are not considered to be "passed," even though they receive support by an overwhelming majority of votes cast at the meeting. Supermajority vote requirements may be responsible for a large portion of these failed votes with high support levels (62 percent of instances since 2008). However, using a base of all outstanding shares for the vote requirement is an even more common corresponding factor (92 percent of instances). The increase in failed majority-supported proposals in recent years can be directly attributed to the change in the rules pertaining to the treatment of broker non-votes.



Vote requirements in the U.S. can be mindboggling to anyone unfamiliar with governance practices and proxy voting. This

article provides an overview of some important factors to consider when assessing proxy vote results and meeting agendas in general. We highlight the following key takeaways:

- **Vote requirements vary significantly by proposal type.** Mergers, share issuances, and changes to the bylaws typically require support by a percentage of all outstanding shares, while the outcome of most other proposals is determined based on votes cast.
- **Supermajority vote requirements are very difficult to remove**, and they make it very difficult for companies to implement governance reform and shareholder-friendly governance practices.
- **Broker non-votes can play an important role in determining a voting outcome**, as they often make up a significant portion of the company's outstanding shares, and they are excluded from most proposals, except for routine times, such as the ratification of auditors.
- **The plurality vote standard remains common practice at small-cap firms**, as approximately 72 percent of non-S&P 1500 Russell 3000 companies continue to employ the practice. Only 29 percent of companies with a plurality vote standard have a director resignation policy in place.

Framing the Problem: Key Voting Concept Questions

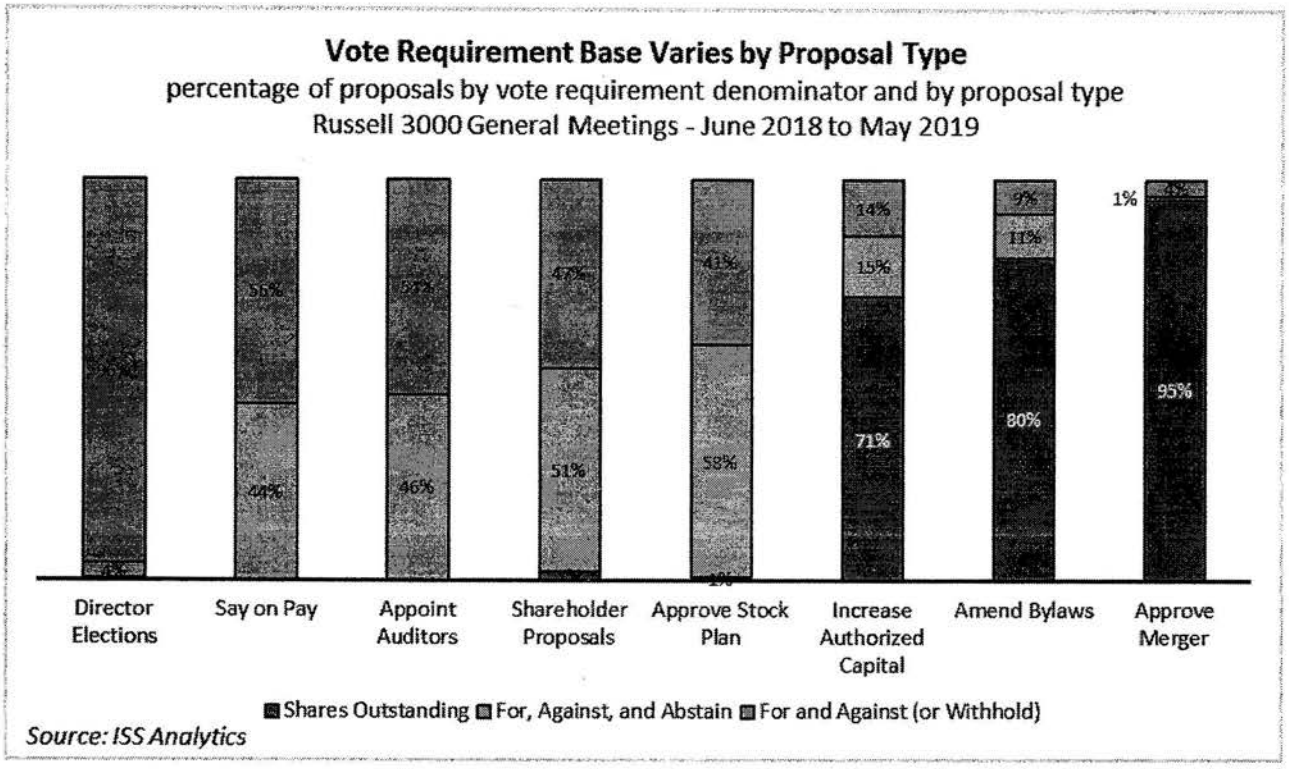
There are three key questions that investors should ask to have a firm grasp on vote requirements at U.S. meetings:

1. The voting base: What will the denominator be to determine an item's passing or failing?
2. The vote standard: What's the difference between a plurality, majority, or supermajority requirement?
3. Broker non-votes: How do they factor into vote results, and how has that changed in recent years?

The following sections will address each of these questions.

Vote Requirement Base

Voting base refers to the denominator of the vote result figure—to determine the proportion of supporting votes, are the "For" votes divided by "For" and "Against" votes, or are "Abstain" votes included, or is the denominator the total number of outstanding votes eligible to be cast? To make matters even more complex, vote requirements may vary by company, by state of incorporation, and even by proposal type on different items on the same proxy ballot.



Individual states typically have default provisions for the vote requirements to pass a resolution, but companies can adopt their own voting thresholds based on provisions in their bylaws. Changes to the charter and bylaws, approving business combinations (such as mergers), and share issuance authorizations typically require approval by a percentage of shares outstanding.

Advisory votes on compensation, shareholder proposals (which are also precatory in nature), equity compensation plan approvals, and auditor appointments are generally based on votes cast, with an almost equal split between companies that count abstentions as cast votes compared to companies that only count votes "For" and "Against." Thus, in many instances, abstentions are considered as votes cast, even though they do not represent sharers voted. Abstentions play a minor role in vote results on management proposals, and they are not expected to significantly impact a voting outcome. On average, less than 0.3 percent of votes are cast as "Abstain."

However, until recently, abstentions appeared much more frequently at environmental and social shareholder proposals, making up to approximately 15 percent of all votes cast on such issues in 2010. By 2019, as investors have integrated ESG into their stewardship framework and have examined social and environmental issues more closely, the rate of abstentions on these proposals has dwindled to a record-low of 1.3 percent of votes cast so far in 2019.

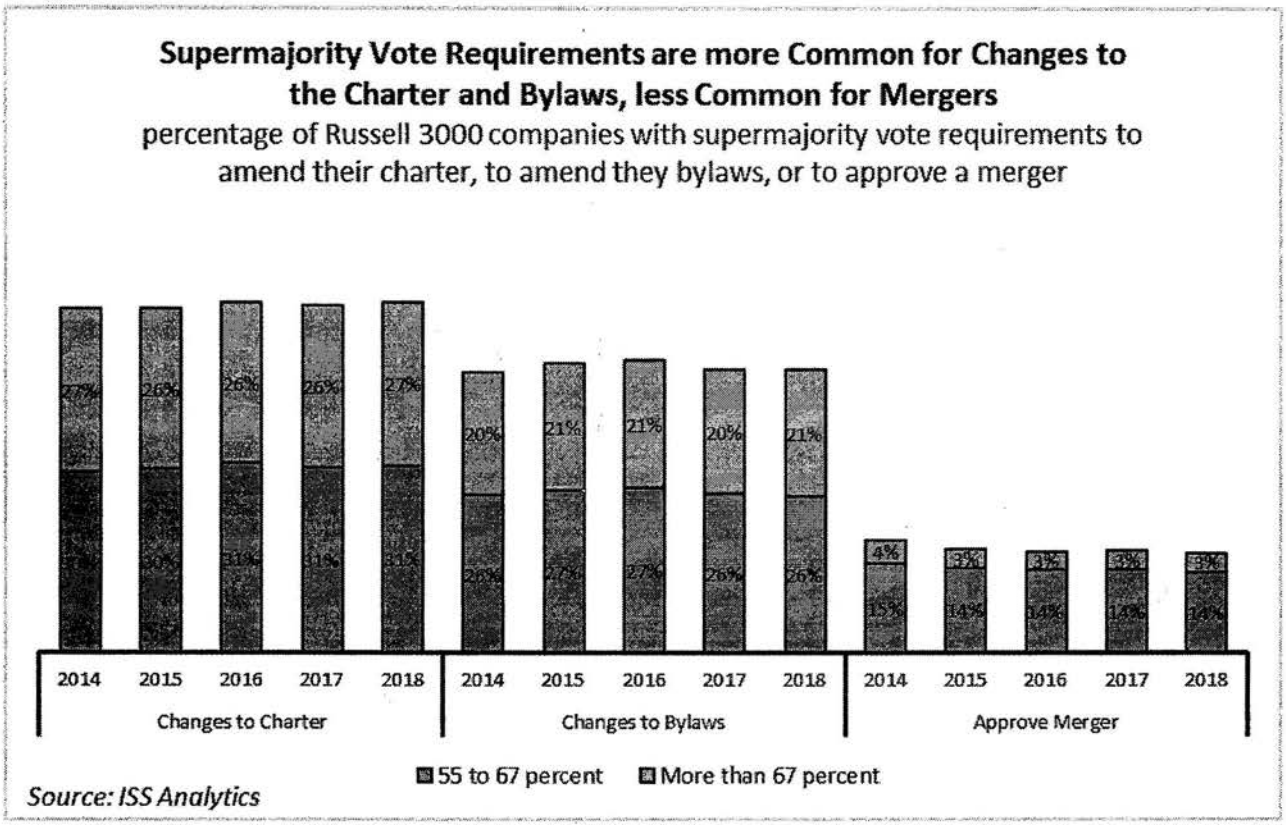
Vote Standard: The Proportion of Votes Required to Pass

Once the base is set, the next key item is the vote standard—that is, the proportion of votes required to be cast "For" a proposal to consider it as passed. In this arena, there are three key concepts: a simple majority vote standard and supermajority vote standards; and—in the specific case of director elections at some companies—a plurality vote standard.

A supermajority requirement establishes that a proportion of greater than 50 percent (calculated using the vote base as defined by the company) is needed to consider a ballot item passed. These supermajority requirements often are pegged at numbers between 55 and 80 percent. Making matters more difficult, supermajority vote standards are often linked to voting bases of all outstanding shares and votes.

Simple majority vote standards represent exactly what you expect: half (plus one) of all votes cast should be cast "For" a ballot item, though that half is based on the denominator set by the vote base. Of course, there are strange implications of this: for instance, using the entire share capital as the base for approving a resolution raises the approval bar significantly—it's in effect a "supermajority in disguise." For example, a proposal with a vote requirement of a simple majority of shares

outstanding at a company with the median vote turnout of 80 percent of shares outstanding would require approval by approximately 62.5 percent of votes cast at the meeting.



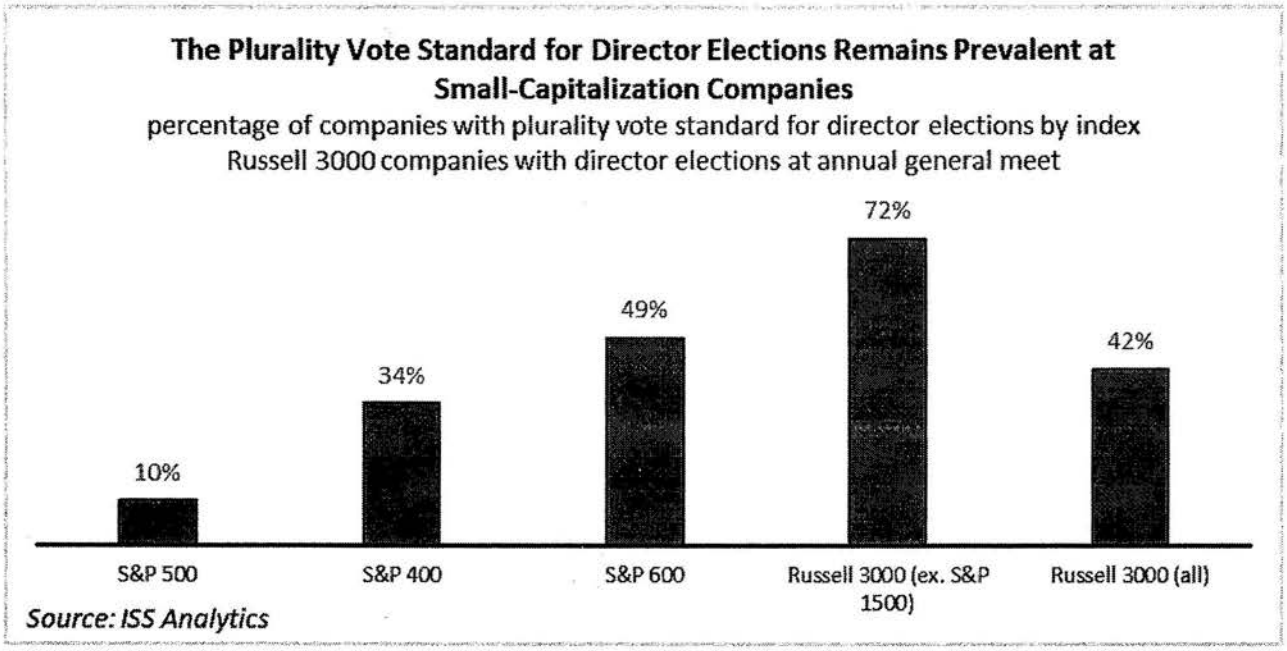
Once put in place, a supermajority vote requirement is very difficult to remove, due to the factors discussed above. To remove the supermajority vote requirement, a company would need to change its articles or bylaws, where the voting requirement threshold is normally based on votes as a percentage of all outstanding shares. At companies with significant shares held by brokers and not instructed, it becomes especially difficult to pass a resolution. From June 2018 to May 2019, 29 percent of management requests to reduce the supermajority vote requirement failed, even though they were supported by management, and they received a median support rate of 98 percent of votes cast.

Among companies that have supermajority vote requirements in place, approximately half apply voting thresholds between 55 percent and two-thirds of outstanding shares, while the other half use thresholds of more than two-thirds of outstanding shares.

Ownership structure plays a vital role in determining the impact of a supermajority vote requirement. In certain instances, a supermajority vote requirement is considered beneficial to minority shareholders. For example, at controlled companies, a supermajority vote requirement may ensure that significant decisions are not made unilaterally by the controlling shareholder (depending on the stake of the controlling entity). According to ISS data, approximately 37 percent of controlled companies had supermajority vote requirements for the amendment of bylaws or charter (compared to approximately 60 percent of non-controlled companies), while only 10 percent of controlled companies have supermajority vote requirements to approve a merger (compared to 15 percent of non-controlled companies).

Director election proposals are also based on votes cast, but they form a separate category, as many companies continue to employee the plurality vote standard in the U.S., which allows for directors to be elected by receiving a minimum of a single vote in favor, irrespective of the opposition, since votes not in favor are "withheld." A growing number of companies that use the plurality vote standard have introduced a "director resignation policy." This mechanism provides that, if a director fails to receive support by the majority of votes cast, they are required to submit their resignation to the board, and the board can decide whether to accept or reject the resignation. While the so-called "plurality plus" standard increases the level of accountability at boards, it does not ensure that shareholder concerns are always addressed. Based on ISS Analytics data, approximately 29 percent of companies with a plurality standard for director elections currently apply a director resignation

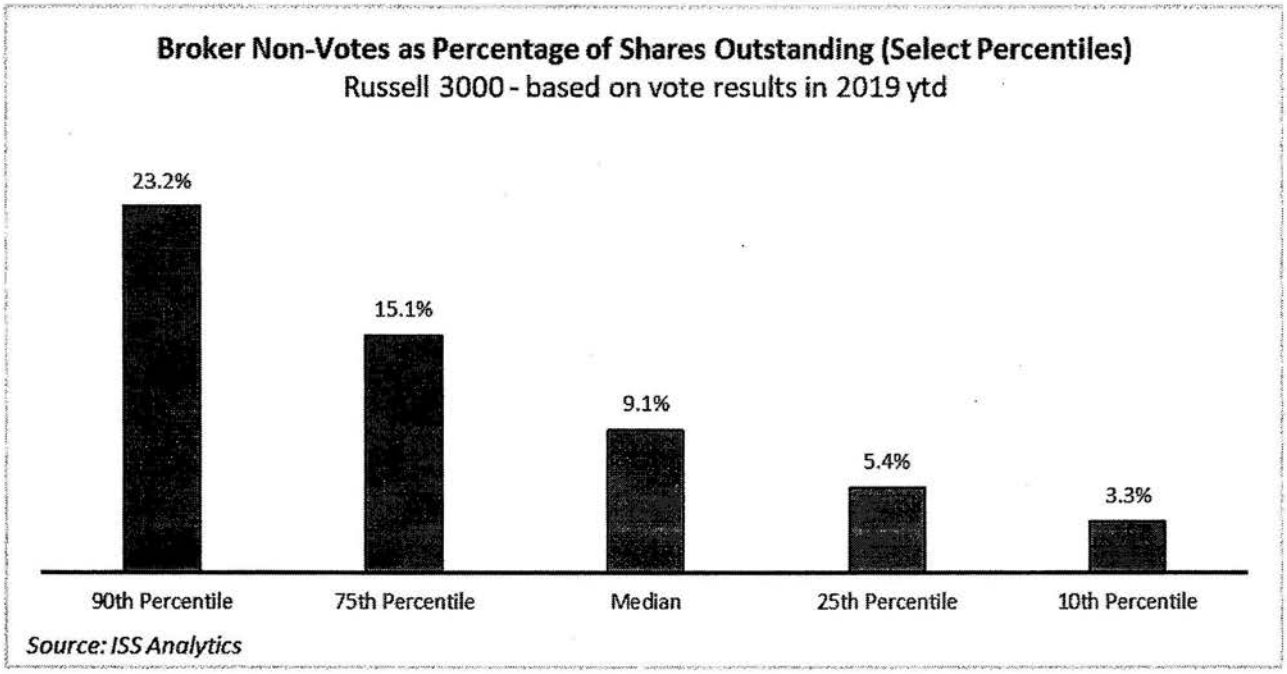
policy. And, in some of those cases, boards have exercised—either explicitly or implicitly—the option not to accept an unelected director's resignation.



Broker Non-Votes

To vote shares held by a broker, the beneficial shareholder needs to provide the broker with instructions on how to vote the shares. If the beneficial owner fails to provide voting instructions, the broker can vote on behalf of the beneficial owner on "routine" proposals. Until the end of the previous decade, brokers were able to submit these so-called uninstructed votes on several proposals, including director elections, certain article amendments, and the ratification of auditors. In 2010, brokers could no longer vote uninstructed votes on director elections and say-on-pay votes. In 2012, **the NYSE updated its definition of "routine"** proposals further to exclude certain corporate governance proposals, such as the declassification of the board, the reduction of supermajority vote requirements, and the adoption of the majority vote standard for the election of directors. With the exclusion of broker non-votes, it became more difficult to approve these resolutions, even with management's support, as the trend depicted in our first graph and this year's Tesla vote illustrates.

Broker non-votes can make up a significant portion of the company's share capital. Based on ISS data for vote results from June 2018 to May 2019, the median broker non-votes accounted for approximately 9 percent of the shares outstanding at U.S. companies. Broker non-votes typically represent shares held by individual investors. In the case of Tesla, broker non-votes accounted for 28 percent of the company's outstanding share capital in 2019. Therefore, a high percentage of broker non-votes can significantly increase the likelihood of a "non-routine" management resolution (including proposals seeking to improve governance practices) failing to pass at the meeting.



The 2012 NYSE updates did not change the "routine" classification for proposals dealing with the appointment of auditors. Therefore, brokers can vote uninstructed shares at these proposals, and the relevant votes also count towards quorum. Even though no laws or regulations require the appointment of auditors to be approved by shareholders, most U.S. general meeting includes this resolution as a routine item, which allows companies to ensure that quorum is met.

Managing the Potential Challenges of Vote Requirements

Understanding a company's vote requirements in the context of its ownership structure can help investors address potential governance risks. Two of the biggest challenges for implementing governance reforms are supermajority vote requirements and a significant number of shares held by brokers that are typically not instructed. Understanding these dynamics can potentially make it easier to engage with companies, so that they may improve their governance before it becomes too difficult. For example, it may be easier for younger companies to remove supermajority vote requirements at their earlier stages, when ownership is relatively concentrated and fewer shares are held by investors who do not vote their shares. In addition, to promote greater accountability at the board, investors may engage with companies about their voting standards for uncontested director elections and monitor the vote results of director elections and companies' responses to low support levels. A good understanding of the implications of vote requirements and a pro-active engagement with companies will likely help manage governance risks before it may be too late or too difficult to do so.

THE CLOROX COMPANY

July 2, 2019

VIA E-MAIL

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

Re: *The Clorox Company*
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that The Clorox Company (the "Company"), intends to omit from its proxy statement and form of proxy (collectively, the "2019 Proxy Materials") for its 2019 Annual Meeting of Stockholders (the "2019 Meeting") a stockholder proposal (the "Proposal") and statements in support thereof submitted by John Chevedden on behalf of James McRitchie (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (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 undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states:

> RESOLVED, Clorox Co. (CLX) shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws 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. This means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. It is important that our company take each step necessary to adopt this proposal topic. It is also important that our company take each step necessary to avoid a failed vote on this proposal topic.

A copy of the Proposal, the supporting statements as well as related correspondence to and from the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(10) because on July 1, 2019, the Company's Board of Directors (the "Board") took action that substantially implemented the Proposal under Rule 14a-8(i)(10).[1]

Specifically, the only provision in the Company's governing documents that requires a supermajority vote is Article Six ("Article Six") of the Company's Restated Certificate of Incorporation (the "Certificate of Incorporation") related to approval of business combinations. Specifically, Article Six requires that any business combination (as defined in the Certificate of Incorporation to include, among other things, certain mergers, consolidations, sales of assets, issuance or transfer of certain securities, and adoption of any

[1] We note that the Proposal is nearly identical to the proposal that was submitted to the Company by John Chevedden on behalf of the Proponent last year (the "2018 Proposal"). The Company's Board similarly took action in July 2018 that had substantially implemented the 2018 Proposal. Subsequently, on July 3, 2018, the Company submitted a no-action request asking that the Staff to concur that the Company could exclude the 2018 Proposal from its 2018 proxy materials under Rule 14a-8(i)(10) because the Company had taken the same actions as those described in this no-action request to substantially implement the 2018 Proposal. On July 5, 2018, the Proponent withdrew the 2018 Proposal "given the Board's action and to minimize Company and SEC expenses," and the Company withdrew its no-action request. The Company proceeded to include a management proposal in its 2018 proxy materials that included the Proposed Certificate Amendment (as defined below), but the proposal failed to receive a sufficient number of votes as required under the Company's Restated Certificate of Incorporation.

plan for the liquidation or dissolution of the Company) must receive the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then-outstanding shares of stock of the Company entitled to vote regularly in the election of directors (the "Voting Stock") voting as a single class. In addition, Article Six further provides that the provisions set forth in Article Six may not be amended or repealed in any respect, unless such action is approved by the affirmative vote of the holders of not less than eighty percent (80%) of the then-outstanding Voting Stock, voting as a single class. The Company is not aware of any requirements in the Company's Bylaws that call for a greater than simple majority vote by stockholders. As a result, the Company does not believe any changes to the Company's Bylaws are implicated by the Proposal.

On July 1, 2019, the Board adopted a resolution as follows:

1. Declaring advisable a proposal to eliminate the supermajority voting provisions from the Certificate of Incorporation by deleting the text of Article Six from the Certificate of Incorporation in its entirety (the "Proposed Certificate Amendment") and directing the Proposed Certificate Amendment's submission for stockholder approval and adoption at the Company's 2019 Meeting;

2. Recommending that stockholders vote for the approval of the Proposed Certificate Amendment at the Company's 2019 Meeting; and

3. Ratifying the Company's retention of a proxy solicitor to assist with the solicitation of proxies in connection with the Company's 2019 Meeting.

If the Proposed Certificate Amendment is approved by the Company's stockholders at the 2019 Meeting, the Company's governing documents will no longer include any supermajority provisions. The text of Article Six, which is proposed to be deleted in its entirety from the Certificate of Incorporation, subject to stockholder approval at the Company's 2019 Meeting, is attached to this letter as Exhibit B.

ANALYSIS

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials if the company has substantially implemented the proposal. 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." *Texaco, Inc*. (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner as set forth by the proponent. For instance, in *General Motors Corp*. (avail. Mar. 4, 1996), the company observed that the Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action letters under the predecessor of Rule 14a-8(i)(10) in situations where the "essential objective" of the

proposal had been satisfied. The company further argued that "[i]f the mootness requirement of paragraph (c)(10) were applied too strictly, the intention of [the rule]—permitting exclusion of 'substantially implemented' proposals—could be evaded merely by including some element in the proposal that differs from the registrant's policy or practice." To that end, the Staff has concurred that companies, when substantially implementing a stockholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the stockholder proponent would implement the proposal. *See General Electric Co.* (avail. Mar. 3, 2015) (concurring with exclusion of a proxy access proposal under Rule 14-8(i)(10) and noting the company's representation that the board has adopted a proxy access bylaw that addresses the "proposal's essential objective"); *Chevron Corp*. (avail. Feb. 19, 2008) (proposal requesting that the board permit stockholders to call special meetings was substantially implemented where the company had adopted provisions allowing stockholders to call a special meeting, unless, among other things, an annual or company-sponsored special meeting that included the matters proposed to be addressed at the stockholder-requested special meeting had been held within a specified period of time before the requested special meeting).

The title and text of the Proposal (including its supporting statements) make clear that the Proposal's essential objective is to remove the supermajority voting provisions contained in the Company's governing documents. As discussed above, the only provision in the Company's governing documents that requires a supermajority vote is Article Six of the Certificate of Incorporation. We note that the Staff has consistently permitted exclusion of a proposal seeking to eliminate supermajority voting provisions where the board lacked unilateral authority to adopt the necessary amendments (which is the case with respect to amending the Certificate of Incorporation under the Delaware General Corporation Law), but implemented the proposal by authorizing an amendment eliminating the supermajority provisions and submitting such amendment for stockholder approval at the next annual meeting of stockholders. *See, e.g.*, *AbbVie Inc.* (avail. Feb. 16, 2018) (concurring with exclusion of a simple majority proposal under Rule 14a-8(i)(10) in light of the company's representation that the company "will provide shareholders at its 2018 annual meeting with an opportunity to approve amendments to its certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [c]ompany's certificate of incorporation and bylaws"); *Duke Energy Corp.* (avail. Feb. 14, 2018) (concurring with exclusion of a simple majority proposal under Rule 14a-8(i)(10) where the company submitted for stockholder approval at its 2018 annual meeting an amendment to its certificate of incorporation to reduce the 80% requirement to a simple-majority requirement); *Eli Lilly & Co.* (avail. Jan. 8, 2018) (same as *AbbVie Inc.*); *QUALCOMM Inc.* (avail. Dec. 8, 2017) (same as *AbbVie Inc.*); *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 shareholders 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").

Moreover, the Staff has also consistently concurred that proposals, like the Proposal, that call for the elimination of supermajority provisions in governing documents are excludable under Rule 14a-8(i)(10), where the supermajority voting standards are replaced with a majority of shares outstanding voting standards. For example, in *Hewlett-Packard Co*. (avail. Dec. 19, 2013), the board amended the company's bylaws to replace several provisions requiring a supermajority vote with a majority of outstanding shares requirement in response to a stockholder proposal that called for a replacement of greater than simple majority vote requirements with majority or simple majority vote requirements in compliance with applicable law. The Staff concurred with exclusion under Rule 14a-8(i)(10) because the company's policies, practices and procedures "compare[d] favorably" with the guidelines of the stockholder proposal. *See also State Street Corp.* (avail. Mar. 5, 2018) (concurring with exclusion of a simple majority proposal as substantially implemented where the company's board approved amendments to the company's articles of organization that would replace each provision that called for a supermajority vote with a majority of outstanding shares vote requirement); *Visa Inc*. (avail. Nov. 14, 2014) (concurring with exclusion of a simple majority proposal as substantially implemented where the company's board approved amendments to the certificate and bylaws that would replace each provision that called for a supermajority vote with a majority of outstanding shares vote requirement).

Most importantly, the Staff has agreed that a proposal that seeks to eliminate supermajority provisions contained in a specific article of a certificate of incorporation could be substantially implemented by a board's authorizing an amendment to the certificate of incorporation that seeks to delete the article containing supermajority voting requirements from the certificate of incorporation in its entirety upon stockholder approval. For instance, earlier this year in *United Technologies Corp.* (avail. Feb. 14, 2018), the Staff concurred that United Technologies Corp. could exclude under Rule 14a-8(i)(10) a nearly identical stockholder proposal that sought to remove the supermajority voting provisions in the Company's governing documents and similarly provided that "[i]t is also important that our company take each step necessary to avoid a failed vote on this proposal topic." Like here, the governing documents of United Technologies contained supermajority requirements only in the company's "fair price" provisions that appeared in Article Ninth of the company's certificate of incorporation. After the company's board adopted a resolution adopting, subject to stockholder approval, an amendment to the company's certificate of incorporation to eliminate Article Ninth from the company's certificate of incorporation in its entirety, the Staff concurred with exclusion of the proposal noting the company's representation that the company "will provide shareholders at its 2018 annual meeting with an opportunity to approve an amendment to eliminate Article Ninth of the Company's certificate of incorporation."

Similarly, the proponent in *AECOM* (avail. Nov. 1, 2016) requested that the board take the steps necessary so that each voting requirement in AECOM's certificate of incorporation and bylaws that called 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. The company's board of directors authorized

an amendment to the company's certificate of incorporation to remove the "fair price" article that contained supermajority voting provisions from the company's certificate of incorporation in its entirety and committed to submitting such amendment to a vote of the company's stockholders at the subsequent annual meeting. The Staff concurred with the exclusion noting the company's representation that "AECOM will provide shareholders at its 2017 annual meeting with an opportunity to approve an amendment to its certificate of incorporation, approval of which will result in the removal of the lone supermajority voting provision in AECOM's governing documents." *See also Becton, Dickinson and Co.* (avail. Nov. 27, 2012) (concurring with exclusion of a simple majority proposal where the company's board of directors authorized an amendment to the company's certificate of incorporation to remove the "fair price" article that contained supermajority provisions from the company's certificate of incorporation in its entirety and committed to submitting such amendment to a vote of the company's stockholders at the subsequent annual meeting and noting 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"); *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 stockholder approval an amendment to the company's certificate deleting the "fair price" provision from the certificate, which contained the only supermajority voting requirement).

As in the foregoing precedent, the Proposed Certificate Amendment substantially implements the Proposal. Specifically, as in foregoing precedent, the Company's stockholders will be asked to approve at the Company's 2019 Meeting the Proposed Certificate Amendment that would, if approved, delete the text of Article Six from the Certificate of Incorporation in its entirety, thereby eliminating the only supermajority voting requirements contained in the Company's governing documents. As in the foregoing precedent, while the Board lacks unilateral authority to adopt the Proposed Certificate Amendment, by committing to submitting the Proposed Certificate Amendment to the Company's stockholders at the 2019 Meeting, the Company and the Board have "take[n] each step necessary to adopt this proposal topic," as requested by the Proposal, and thereby addressed the "essential objective" of the Proposal.

The Proposal also provides that "[i]t is also important that our company take each step necessary to avoid a failed vote on this proposal topic." The Board has fully implemented this request as well. Specifically, the Board has adopted resolutions recommending to the stockholders that they vote "FOR" the Proposed Certificate Amendment. Moreover, the Board ratified the Company's retention of Innisfree M&A Incorporated—a proxy solicitor—to assist with the solicitation process in connection with the 2019 Meeting.

To conclude, the essential objective of the Proposal is to remove the only supermajority provision in the Company's governing documents—here, it is only Article Six in the Certificate of Incorporation—and replace it with a majority voting standard. 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 Proposed Certificate Amendment), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for stockholder approval at the next annual meeting. This is precisely what the Board had done here. Accordingly, consistent with the precedent cited above, the "essential objective" of the Proposal has been satisfied, and the Proposal (including its supporting statements) may be excluded from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(10).

CONCLUSION

Based on the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal (including its supporting statements) from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to angela.hilt@clorox.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (510) 271-7021.

Sincerely,

Angela Hilt
Vice President, Deputy General Counsel and Corporate Secretary
The Clorox Company

Enclosures

cc: Laura Stein, The Clorox Company
James McRitchie
John Chevedden

EXHIBIT A

From: *** [mailto: ***]
Sent: Monday, May 06, 2019 11:54 AM
To: Angela Hilt
Cc: Laura Stein; Jonathan Solorzano
Subject: Rule 14a-8 Proposal (CLX)``

Dear Ms. Hilt,
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

***

The Clorox Co.
Laura Stein, Corporate Secretary
1221 Broadway
Oakland, CA 94612-1888
United States
Phone: 510-271-7021
Fax: 1-510-832-1463
laura.stein@Clorox.com
Angela.Hilt@Clorox.com

May 5, 2019

Dear Corporate Secretary,

I am pleased to be a shareholder in the Clorox Co. and appreciate the leadership our company has shown on numerous issues. Our company has unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

The attached shareholder proposal, seeking a **Simple Majority Vote Standard** on all issues, is submitted for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year, and I pledge to continue to hold the required stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms I am delegating John Chevedden and/or his designee to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden (PH: *** at: *** *** to facilitate prompt communication. Please identify me as the proponents of the proposal exclusively.

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

Sincerely, J. McRitchie

May 5, 2019

James McRitchie — Date

cc: Laura Stein, General Counsel via Laura.Stein@Clorox.com

[CLX: Rule 14a-8 Proposal, May 5, 2019]
[This line and any line above it – *Not* for publication.]

Proposal [4*] – Simple Majority Vote

RESOLVED, Clorox Co. (CLX) shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws 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. This means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. It is important that our company take each step necessary to adopt this proposal topic. It is also important that our company take each step necessary to avoid a failed vote on this proposal topic.

Supporting Statement: Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of six entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=593423).

Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management. The majority of S&P 500 and S&P 1500 companies have no supermajority voting requirements. Additionally, unlike many S&P 500 and S&P 1500 companies, our shareholders cannot act by written consent.

This proposal topic won 98.9% at Clorox last year but did not receive the vote required for approval under the Company's restated certificate of incorporation, which is the affirmative vote of holders representing eighty percent or more of the voting power of all shares of outstanding stock entitled to vote generally in the election of directors.

Please vote to enhance shareholder value:

Simple Majority Vote – Proposal [4*]
[This line and any below are *not* for publication]
Number 4* to be assigned by CLX

James McRitchie, *** sponsors this proposal.

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

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

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

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

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

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

May 13, 2019

VIA OVERNIGHT MAIL AND EMAIL
John Chevedden
***

Dear Mr. Chevedden:

I am writing on behalf of The Clorox Company (the "Company"), which received on May 6, 2019, the stockholder proposal you submitted on behalf of James McRitchie (the "Proponent") entitled "Simple Majority Vote" pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2019 Annual Meeting of Stockholders (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, the Proponent must submit sufficient proof of the Proponent's continuous ownership of the required number or amount of Company shares for the one-year period preceding and including May 6, 2019, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including May 6, 2019; or

(2) if the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponent's ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the required number or amount of Company shares for the one-year period.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most

large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.ashx. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including May 6, 2019.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the required number or amount of Company shares for the one-year period preceding and including May 6, 2019. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including May 6, 2019, the required number or amount of Company shares were continuously held: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 1221 Broadway, Oakland, CA, 94612. Alternatively, you may transmit any response by email to me at angela.hilt@clorox.com.

If you have any questions with respect to the foregoing, please contact me at (510) 271 7021. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

Angela C. Hilt
Vice President, Corporate Secretary
Deputy General Counsel

cc: James McRitchie

Enclosures

Ameritrade

05/14/2019

James McRitchie
***

Re: Clorox Co.

To Whom it May Concern,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held, and had held continuously for at least thirteen months, 25 shares of Clorox Co. (CLX) common stock in his account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

Matt Beckman
sr. Resource Specialist
TD Ameritrade

EXHIBIT B

PROPOSED CERTIFICATE AMENDMENT

The text of Article Six, which is proposed to be deleted from the Company's Restated Certificate of Incorporation in its entirety and replaced with "[Reserved]", is set forth as follows:

ARTICLE SIX

Part I

Vote Required For Certain Business Combinations

A. In addition to any affirmative vote required by law or this Restated Certificate of Incorporation, and except as otherwise expressly provided in Part II of this Article Six, the following transactions:

(i) any merger or consolidation of this corporation or any Subsidiary (as hereinafter defined) into or with

(a) any Interested Stockholder (as hereinafter defined); or

(b) any other corporation (whether or not it is an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(ii) 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 this corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of more than ten percent (10%) of the Fair Market Value of the consolidated total assets of this corporation; or

(iii) the issuance or transfer by this corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of this corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property having an aggregate Fair Market Value of more than ten percent (10%) of the Fair Market Value of the consolidated total assets of this corporation; or

(iv) the adoption of any plan or proposal for the liquidation of this corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or

(v) any reclassification of this corporation's securities (including any reverse stock split), or recapitalization of this corporation, or any merger or

consolidation of this 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 this corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder;

shall require the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then outstanding shares of stock of this corporation entitled to vote regularly in the election of directors (the "Voting Stock") voting as a single class (it being understood that for purposes of this Article Six, each share of the Voting Stock other than Common Stock shall have the number of votes granted to it pursuant to Article Four of this Restated 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.

B. The term "Business Combination" as used in this Article Six shall mean any transaction which is referred to in any one or more of clauses (i) through (v) of paragraph A of Part I.

Part II

When Higher Vote Is Not Required

The provisions of Part I of this Article Six 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 Restated Certificate of Incorporation, if all of the conditions specified in either of the following paragraphs A and B are met:

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

B. All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following:

(a) (if applicable) the highest per share price 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; and

(b) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested

Stockholder became an Interested Stockholder (such latter date is referred to in this Article Six as the "Determination Date"), whichever is higher.

(ii) The aggregate amount of the cash and the Fair Market Value on the date of the consummation of the Business Combination of consideration other than cash to be received per share by the holders of shares of any other class of outstanding Voting Stock shall be 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 every class of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(a) (if applicable) the highest per share price 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;

(b) (if applicable) 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 this corporation; or

(c) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(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. The price determined in accordance with paragraphs B(i) and B(ii) shall be subject to appropriate adjustment in the event of any stock dividend, stock split, combination of shares or similar event.

(iv) After such Interested Stockholder has become an Interested Stockholder except as approved by a majority of the Disinterested Directors, there shall have been:

(a) no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock, if any; and

(b) no reduction in the effective annual rate of dividends paid on the Common Stock.

(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, whether in anticipation of or in connection with such Business Combination or otherwise.

Part III

Certain Definitions

For the purpose of this Article Six:

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

B. "Interested Stockholder" shall mean any person (other than this corporation, any Subsidiary or any compensation plan of this corporation) who or which:

(i) is the beneficial owner, directly or indirectly, of more than 5% of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of this 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 more than five percent (5%) of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise acquired or 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 purpose of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Part III, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Part III 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 March 1, 1984.

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

G. "Disinterested Director" means any member of the board of directors of this corporation (the "Board") who is unaffiliated with the Interested Stockholder by whom or on whose behalf, directly or indirectly, the Business Combination is proposed or was a member of the Board prior to the time that such Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with such 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 as reported in the principal consolidated transaction reporting system for securities listed or admitted to trading 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 stock is listed, or, if such stock is not listed on such an exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period immediately preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotation System or any system then in use, and

(ii) in the case of property other than cash or stock valued under (i) above, the fair market value of such property on the date in question as determined in good faith by a majority of the Disinterested Directors.

I. In the event of any Business Combination in which this corporation is the surviving corporation, the phrase "consideration other than cash to be received" as used in clauses (i) and (ii) of paragraph B of Part II of this Article Six shall include the Fair Market Value of the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

Part IV

Powers of The Board of Directors

A majority of the Disinterested Directors of this corporation shall have the power and duty to determine for the purposes of this Article Six, on the basis of information known to them after reasonable inquiry:

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 Association of another; and

D. 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 this corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of more than ten percent (10%) of the Fair Market Value of the consolidated total assets of this corporation.

Part V

Fiduciary Obligations

Nothing contained in this Article Six shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Part VI

Amendment Or Repeal

The provisions set forth in this Article Six may not be amended or repealed in any respect, unless such action is approved by the affirmative vote of the holders of not less than eighty percent (80%) of the then outstanding Voting Stock, voting as a single class.