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

DIVISION OF
CORPORATION FINANCE

March 6, 2023

Marina Breed
American Tower Corporation

Re: American Tower Corporation (the "Company")
Incoming letter dated March 6, 2023

Dear Marina Breed:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Myra K. Young (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 Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 13, 2023 request for a no-action letter from the Division.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 https://www.sec.gov/corpfin/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: James McRitchie

January 13, 2023

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: American Tower Corporation
Omission of Shareholder Proposal Submitted by Mrs. Myra Young and Mr. James McRitchie
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

American Tower Corporation (the "***Company***") has received a stockholder proposal (the "***Proposal***") and related supporting statement (the "***Supporting Statement***") from Mrs. Myra Young ("***Mrs. Young***") and Mr. James McRitchie ("***Mr. McRitchie***," and together with Mrs. Young, the "***Proponents***") for inclusion in the Company's proxy statement and form of proxy (the "***2023 Proxy Materials***") for its 2023 Annual Meeting of Stockholders (the "***2023 Annual Meeting***"). The Company intends to omit the Proposal from its 2023 Proxy Materials pursuant to Rule 14a-8 ("***Rule 14a-8***") of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***").

Pursuant to Staff Legal Bulletin No. 14D (November 7, 2008) ("***SLB 14D***"), Question C, the Company is submitting this letter and its attachments to the Staff of the Division of Corporation Finance (the "***Staff***") via e-mail at shareholderproposals@sec.gov, and the undersigned has included her name, telephone number and e-mail address both in this letter and the cover e-mail accompanying this letter. In accordance with Rule 14a-8(j) of the Exchange Act, the Company is submitting this letter to the U.S. Securities and Exchange Commission (the "***Commission***") no later than eighty (80) calendar days before the Company intends to file its definitive 2023 Proxy Materials, and a copy of this submission is being sent simultaneously to the Proponents as notification of the Company's intention to omit the Proposal from its 2023 Proxy Materials. The Company hereby requests confirmation from the Staff that it will not recommend any enforcement action if the Company omits the Proposal in reliance on Rule 14a-8 from the 2023 Proxy Materials. This letter includes the Company's statement of the reasons it deems the omission of the Proposal to be proper.

The Company takes this opportunity to inform the Proponents that, if they elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company in accordance with Rule 14a-8(k) and Question E of SLB 14D.

THE PROPOSAL

For the convenience of the Staff, the Proposal states:

Resolved: Myra K. Young and other shareholders request that directors of American Tower Corporation (the "***Company***") amend its bylaws to include the following language:

Shareholder approval is required for any advance notice bylaw amendments that:

1. require nomination of candidates more than 90 days before the annual meeting,

2. impose new disclosure requirements for director nominees, including disclosures related to past and future plans, or

3. require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's shares.

Copies of the Proposal and the Supporting Statement are attached to this letter as Exhibit A. Subsequent correspondence between the Company and the Proponents, including Mr. John Chevedden ("***Mr. Chevedden***"), who was designated by the Proponents as their agent, is attached to this letter as Exhibit B.

BASES FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8 because (I) the Proposal is materially misleading and impermissibly vague and indefinite, in violation of Rule 14a-8(i)(3), (II) the Company has substantially implemented the Proposal, (III) the Proposal violates Rule 14a-8(c)'s limit of one proposal per person and (IV) the Proposal, if implemented, would cause the Company to violate Delaware law, and may cause the Company to violate future federal or state laws.

ANALYSIS

I. The Proposal Is Materially Misleading and Impermissibly Vague And Indefinite, in Violation of Rule 14a-8(i)(3).

Rule 14a-8(i)(3) permits a company to exclude all or portions of a shareholder proposal or its supporting statement "[i]f the proposal or supporting statement is contrary to any of the Commission's proxy rules, including [Rule] 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." As illustrated herein, the Proposal contains various statements that inaccurately reflect the Company's bylaws (the "***Bylaws***") and its amendment provisions. As a result, if the Proposal were to be included in the 2023 Proxy Materials, it would

inevitably materially mislead shareholders as to what the Bylaws state with respect to shareholder director nominations and the current mechanisms for amending the Bylaws, in violation of Rule 14a-9.

Additionally, the Staff has recognized that companies can exclude shareholder proposals that are "so vague and indefinite that 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 (Sept. 15, 2004). Historically, the Staff has consistently applied this standard. *See, e.g.*, *Fuqua Industries, Inc.* (Mar. 12, 1991) (concurring with the exclusion of a proposal because the company and its stockholders might interpret the proposal differently 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"); *Alaska Air Group Inc.* (Apr. 11, 2007) (concurring with the exclusion of a proposal vaguely requesting that the company amends its governing instruments to "assert, affirm and define the right of the owners of the company to set standards of corporate governance"); *General Motors Corp.* (Mar. 26, 2009) (concurring with the exclusion of a proposal requesting elimination of "all incentives for the CEOs and the Board of Directors"); *Bank of America Corp.* (Feb. 22, 2010) (concurring with the exclusion of a proposal to amend the company's bylaws to establish a board committee on "US Economic Security" without adequately explaining the scope and duties of the proposed board committee); *SunEdison, Inc.* (Mar. 6, 2014) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) as "vague and indefinite," in particular because "the proposal does not sufficiently explain when the requested bylaw would apply"); and *Cisco Systems, Inc.* (Oct. 7, 2016) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3) as "vague and indefinite"). As illustrated below, the Proposal is vague and indefinite on several fronts, and if the Proposal were to be included in the 2023 Proxy Materials, (i) shareholders would be unable to make an informed vote on the Proposal, (ii) the Company would be unable to determine with any reasonable certainty exactly what actions or measures the proposal would require in the event it was approved, and (iii) there would be a high risk that the action ultimately taken by the Company upon implementation of the Proposal, if approved, would be significantly different from the actions envisioned by the stockholders when voting on the Proposal.

The lead-in to the Proposal, which applies to all three proposed Bylaw amendments, is unclear and confusing in that it does not explain what the Proponents mean by requiring "shareholder approval" for certain kinds of Bylaw amendments. For instance, "shareholder approval" could mean anything between requiring that a certain percentage of the Company's common stock shareholders approve a matter to requiring approval by 100% of the Company's shareholders. If the Proponents meant the former, it is not clear anywhere in the Proposal or the Supporting Statement what percentage approval they sought to require. If the Proponents meant the latter, then the Proposal is essentially a prohibition on the Company's ability to ever include the nomination requirements in question, for it would be virtually impossible to obtain 100% of shareholder votes on any matter. This scenario would be particularly worrisome if the Company needed to enact a Bylaw amendment because (a) applicable law required it to do so, or (b) the Company has legitimate business concerns that necessitate an amendment, as explained below. The term "shareholder approval" is a key term and an essential component of the Proposal, and it is overly vague and indefinite. The Staff has historically concurred in the exclusion of shareholder proposals that fail to define key terms. *See, e.g.*, *NSTAR* (Jan. 5, 2007) (concurring in the exclusion

of a proposal where the terms "record keeping" and "financial records" were not defined); *The Boeing Company* (Mar. 2, 2011) (concurring in the exclusion of a proposal that failed to "sufficiently explain the meaning of 'executive pay rights'"); and *Moody's Corp*. (Feb. 10, 2014) (concurring in the exclusion of a proposal where the term "ESG risk assessments" was not defined). Since the term "shareholder approval" is not defined, and it is a key term that applies to all three prongs of the Proposal and could have easily been defined by the Proponents, the Proposal should be similarly considered too vague and indefinite, in violation of Rule 14a-8(i)(3).

The first prong of the Proposal ("***Prong 1***") fails to specify whether "any advance notice bylaw amendments that require nomination of candidates more than 90 days before the annual meeting" refers to (a) the deadline for nominating candidates *directly at a shareholders' meeting* or (b) the deadline for submitting director nominations to be included *in the Company's proxy materials*. As is clear from the Company's Bylaws, the respective deadlines for these two distinct nomination processes are different. Under the Bylaws, if a shareholder would like to nominate a candidate for a directorship at a shareholder's meeting, they must have delivered notice thereof in writing "to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation […] with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120th) day and not later than the close of business on the ninetieth (90th) day prior to the first anniversary of the Corporation's most recent annual meeting of stockholders." Section 5(b) of Article IV of the Bylaws (*Procedure for Nominations of Shareholders*). On the other hand, if a shareholder would like to nominate a candidate to be included in the Company's proxy materials, such shareholder must deliver a nomination notice "to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the one-hundred fiftieth (150th) day and not later than the close of business on the one-hundred twentieth (120th) day prior to the first anniversary of the release date of the Corporation's proxy materials for its most recent annual meeting of stockholders." Section 10(c) of Article III of the Bylaws (*Proxy Access—Delivery of Nomination Notice*).

That the Proponents refer to a deadline of "more than 90 days before the annual meeting" could suggest that they were attempting to target Article IV of the Bylaws—for the deadline specified therein is of a minimum of 90 days from the first anniversary of the Company's most recent shareholders' meeting. However, the Supporting Statement focuses exclusively on Rule 14a-19 and the concept of universal proxy, thus implying that the Proponents' concerns are, in fact, with respect to the universal proxy card. Read alongside the Supporting Statement, Prong 1 can more easily be interpreted as referring to the deadline for submitting director nominations to be included in the proxy card. However, under the Bylaws, nominating shareholders are already required to submit a nomination notice for inclusion in proxy materials "not earlier than the one-hundred fiftieth (150th) day and not later than the close of business on the one-hundred twentieth (120th) day prior to the first anniversary of the release date of the Corporation's proxy materials for its most recent annual meeting of stockholders." In other words, the Bylaws *already require* that shareholders that would like to include director nominations in the Company's proxy materials give notice to the Company significantly more than 90 days before the annual meeting.

If the latter was the Proponents' intention, the Proposal is misleading shareholders into believing that the current deadline for proxy access under the Company's Bylaws is of no more

than 90 days before the annual meeting, when in fact the deadline is of no later than 120 days prior to the first anniversary of the release date of the Company's proxy materials for its most recent annual shareholders' meeting. If this is the case, then the Proponents are also indirectly attempting to amend Section III of the Bylaws, instead of the amendment provisions of the Bylaws, which appears to be the intention of the Proposal on its face. This type of roundabout request with a concealed outcome should be considered materially misleading, and highlights the potential misunderstandings that are inherent in adopting an unclear Proposal if it were approved by the Company's shareholders.

Moreover, the Proponents are suggesting that a proxy access deadline of more than 90 days before the annual meeting is unfair to shareholders and a recent trend among directors. The Supporting Statement states:

> "The bylaw amendments set forth in the proposed resolution would presumptively deter legitimate use of Rule 14a-19 by deterring legitimate efforts by shareholders to seek board representation through a proxy contest. […] Directors of at least one company (Masimo Corp.) recently adopted bylaw amendments that could deter legitimate efforts by shareholders to seek board representation through a proxy contest. […] Directors of other companies are considering similar proposals."

However, the Company's proxy access deadline is one that is extremely common among public companies: a study by the Harvard Law School Forum on Corporate Governance found that 80% of the companies it surveyed (*i.e.*, 451 out of 565 of the companies surveyed) provided shareholders a deadline to include proxy access nominees in the company's proxy materials of between 120 to 150 days before the anniversary of the date on which the company released its proxy statement for the previous year's annual meeting. In fact, only 7% of companies (*i.e.*, 42 out of 565 of the companies surveyed) provided a deadline of between 90 and 120 days before the anniversary of the previous year's annual meeting date.[1] In sum, if the latter was the Proponents' intention—which appears to be the case based on their Supporting Statement—the Proponents are attempting to materially mislead shareholders both with regards to the proxy access deadline currently contemplated by the Bylaws as well as to how common this deadline is among public companies.

The second prong of the Proposal ("***Prong 2***") does not specify what the Proponents mean by "new disclosure requirements for director nominees, including disclosures related to past and future plans." If "new disclosure requirements for director nominees" is interpreted literally, it could be construed as an extraordinarily broad category that includes *all* information that director nominees are asked to provide to the Company and/or to regulatory authorities. Interpreted literally, this request carries a high risk that the Company will not be able to comply with applicable state and federal law. *See* Section IV. The Supporting Statement refers to requirements that "inequitably restrict shareholders' right to nominate directors." Thus, shareholders voting on the Proposal would be led to believe that the Bylaw amendments requested are limited to what is needed to prevent directors from "deter[ring] legitimate efforts by shareholders to submit nominees." In fact, the Proponents specify in the Supporting Statement that the Proposal "simply

[1] *See* Gregory, H. et al., "The Latest on Proxy Access," *Harvard Law School Forum on Corporate Governance* (Feb. 1, 2019), available at https://corpgov.law.harvard.edu/2019/02/01/the-latest-on-proxy-access/.

asks the board to commit not to amend the bylaws to deter legitimate efforts to seek board representation, without submitting such amendments to shareholders." However, the language in the Proposal is not specific enough to be limited to "inequitable" disclosure requirements, and instead captures disclosure requirements mandated by law or by legitimate Company concerns. Thus, shareholders could be misled by the Proposal to vote on potentially preventing the Company from complying with legal requirements without intending such consequences.

Along the same lines, the Supporting Statement focuses on inequity between requirements for shareholder director nominee and requirements for board director nominees. The Proponents present shareholders with a hypothetical example of a company imposing disclosure requirements for shareholder nominees, but waiving those requirements for the boards' nominees. They suggest to shareholders that, by voting for the Proposal, they will prevent similar abuses by the Company: "To ensure shareholders can vote on any proposal that would impose *inequitable* restrictions, we urge a vote FOR Fair Elections." However, the Proposal does not differentiate between requirements for shareholder director nominee and requirements for board director nominees. Instead, the Proposal seeks to subject the inclusion of *any* new disclosure requirement to shareholder approval—a concern that is not addressed in the Supporting Statement. After reading the Supporting Statement, shareholders are led to believe that they are voting to prevent inequity between shareholder nominees and board nominees, when in fact the Proposal would subject the Company to cumbersome and risky barriers to add any new disclosure requirement for *all* nominees, even if those requirements are mandated by applicable law.

At the same time, the inclusion of the phrase "including disclosures related to past and future plans" does not clarify the meaning of Prong 2, but rather obfuscates it. It is unclear what "past plans" could mean in the context of director nominations, which could be so broad as to include personal plans, professional plans, plans involving the Company, plans not involving the Company, realized plans or unrealized plans. Similarly, "future plans" could be interpreted as plans of the director nominees for their own professional careers, plans involving the Company, plans with respect to other directorships they hold, plans for other directorships they want to be nominated for, among other possibilities. It is impossible to decipher what the Proponents had in mind, and thus it would be impossible for shareholders to vote on Prong 2 of the Proposal or for the Company to implement Prong 2 of the Proposal. As indicated above, if a request is so inherently vague and indefinite that shareholders voting on it would be unable to ascertain with reasonable certainty the policies that the Company should implement to enact the Proposal, the request can be considered misleading under Rule 14a-9. In this case, Prong 2 is so inherently vague and indefinite that it should be considered misleading.

The third prong of the Proposal ("***Prong 3***") seeks shareholder approval for any advance notice bylaw amendments that "require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's shares." First, it is unclear whether by the term "investors" the Proponents mean the nominating shareholders or the nominating shareholders' limited partners or business associates. Therefore, it would be impossible for the Company to implement with any reasonable certainty the proposed exception to Prong 3. Second, Prong 3 leads shareholders to believe that the Bylaws do not currently require nominating shareholders to disclose limited partners or business associates. However, under the Bylaws, nominating shareholders are already required to disclose their limited

partners and business associates under certain circumstances, even if the nominating shareholders, limited partners or business associates own less than 5% of the Company's shares. For instance, under Section 5(c) of Article IV of the Bylaws (*Procedure for Nominations by Stockholders*), "[a] stockholder's notice to the Secretary of the Corporation shall set forth, (i) as to the stockholder of record giving such notice and any beneficial owner on whose behalf the nomination is made, [...] (B) the class and number of shares of stock of the Corporation which are, directly or indirectly, owned of record or beneficially by such stockholder and by such beneficial owner, respectively, *and their respective affiliates (naming such affiliates)*, as of the date of such notice […]" (emphasis added). Additionally, the proxy rules require that this kind of information be delivered under certain circumstances. For example, Item 5(b)(ix) of Schedule 14A requires that, in the context of proxy contests, there be disclosure of the "amount of securities of the registrant owned beneficially, directly or indirectly, *by each of the participant's associates* and *the name and address of each such associate* […]" (emphasis added). Both the Bylaws and Schedule 14A already require that nominating shareholders disclose their limited partners or business associates under certain circumstances, even if the nominating shareholders, limited partners or business associates own less than 5% of the Company's shares. By asking shareholders to vote on a proposal to prevent an amendment of the Bylaws for a type of disclosure that is already required, the Proponents are suggesting that such disclosure is not yet required, which is materially misleading.

Therefore, the Company respectfully requests that the Staff concur with its view that the Proposal may be excluded from the Company's 2023 Proxy Materials pursuant to Rule 14a-8(i)(3).

II. The Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) as the Company Has Substantially Implemented the Proposal by Providing Shareholders with the Ability to Amend and Repeal Bylaw Amendments.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials "[i]f the company has already substantially implemented the proposal." While the Staff had historically interpreted this Rule as requiring full implementation of the relevant proposal, in 1983, the SEC adopted a revised "substantial implementation" standard, noting that "formalistic application of [the Rule] defeated its purpose" as proponents were easily circumventing the Rule by submitting proposals that differed only marginally from companies' existing policies. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "***1983 Release***"). The Staff has emphasized 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.* (Mar. 28, 1991). Such policies, practices and procedures may compare favorably with a proposal even if they do not address a proposal in its entirety. *Walgreen Co.* (Sept. 26, 2013). Even where only certain elements of a proposal have been implemented, the Staff has found that, so long as the company has addressed the proposal's underlying concerns and its policies effect the proposal's "essential objective," no-action relief can be granted. *General Motors Corp.* (Mar. 4, 1996).

The Proposal appears to seek to provide shareholders with a mechanism to counter potential advance notice amendments to the Bylaws enacted by the Company's board of directors that would alter the requirements for the nomination of directors by shareholders. That this ability

to vote on such Bylaw amendments is the essential objective of the Proposal is clear from the Supporting Statement:

> "For Rule 14a-19 to be implemented equitably, boards must not undertake bylaw amendments that deter legitimate efforts by shareholders to submit nominees. The bylaw amendments set forth in the proposed resolution would presumptively deter legitimate use of Rule 14a-19 by deterring legitimate efforts by shareholders to seek board representation through a proxy contest."

The Company recognizes the importance of providing shareholders with a democratic mechanism to seek board representation—and indeed to amend, alter and ultimately write the rules that govern the nomination and election processes for directors. Under the Bylaws, and consistent with Section 109 of the Delaware General Corporation Law (the "***DGCL***"), a majority of shareholders can repeal director-led amendments of any kind—including advance notice amendments that would alter the requirements for the nomination of directors. A copy of the Bylaws is attached hereto as Exhibit C. The amendment provision of the Bylaws provides as follows:

> "The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time may[be] adopted, only by the majority of the entire Board of Directors *or with the approval or consent of the holders* of not less than a majority, determined in accordance with the provisions of the second paragraph of Section A of Article FOURTH of the Certificate of Incorporation, of the total number of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of director." Article XI of the Bylaws (emphasis added).

This clear shareholder authority to amend, alter or repeal *any* Bylaw amendments, including those related to advance notice requirements, effects the Proposal's essential objective to an even greater extent than the shareholder vote contemplated by the Proposal, which limits shareholder oversight to a narrow set of hypothetical amendments.

The Proponents themselves are aware of this shareholder authority, and the Supporting Statement belies that the Company has already substantially implemented the Proposal. The Supporting Statement recognizes that "[t]he power to amend bylaws is shared by directors and shareholders. Although directors have the power to adopt bylaw amendments, shareholders have the power to check that authority by repealing board-adopted bylaws." Here, the Proponents explicitly acknowledge that Company's shareholders already have a mechanism to counter director-led amendments to the Bylaws, including those related to advance notice requirements.

The Staff has previously granted no-action relief in numerous instances where it deemed that a proposed proxy access or director election-related proposal was already substantially implemented by a company's existing bylaws or other corporate governance documents. *See, e.g.*, *Lockheed Martin Corp.* (Dec. 19, 2016) and *Delta Air Lines, Inc.* (Mar. 12, 2018) (both concurring with the exclusion of a proposal submitted by Mr. Chevedden where the company already provided robust proxy access for shareholder nominees). In these cases, whether no-action relief was granted turned on whether a company's existing bylaws compared favorably to the proposal's requests.

The Staff granted relief even in instances where only some of a proposal's elements were satisfied, as long the proposal's essential objective—granting proxy access to shareholders—was achieved. For example, in *Lockheed Martin Corp.*, the shareholder proposal in question requested the adoption of a bylaw consisting of seven "essential elements" related to proxy access. Prior to receiving the proposal, the company had already adopted a proxy access bylaw that compared favorably to the guidelines of the proposal and addressed its essential objective, despite differences in certain aspects of the seven "essential elements" requested. Similarly, in *Celgene Corp.* (Feb. 22, 2017), the Staff concurred that the company could exclude a proposal requesting a proxy access bylaw, despite differences to the specific bylaw terms requested, where the company had already adopted proxy access before the proposal was submitted.

In the Proposal, the Proponents do not argue that the Bylaws, the robustness of its proxy access or its director nomination provisions are inadequate. On the contrary, the Proponents seek to entrench current provisions while at the same time recognizing that, were the board of directors to attempt to change such favorable provisions, shareholders already "have the power to check that authority by repealing board-adopted bylaws." The particular mechanism requested by the Proposal—subjecting director-led amendments to a shareholder vote *before* the amendment enters into effect—impedes the ability of the Company's directors to effectively manage and govern the Company in an effort to achieve an objective that the Bylaws already provide for: shareholder oversight of Bylaw amendments. Although the existing mechanism is not identical to the one proposed by the Proponents, the end-result is the same: shareholders can block director-led amendments to the Bylaws that would alter the requirements for the nomination of directors. The Staff has repeatedly reiterated that a proposal can be deemed substantially implemented even if such implementation is not in the exact format recommended by a shareholder proponent. *See* 1983 Release; *see also Texaco. Inc.* (Mar. 28, 1991); *Walgreen Co.* (Sept. 26, 2013); *General Motors Corp.* (Mar. 4, 1996); *Borders Group, Inc.* (Mar. 11, 2008) (where the company's implementation of a 25% threshold to call a special shareholder meeting was deemed a substantial implementation of a proposal to allow shareholders to call a special meeting with no threshold); and *Exxon Mobil Corp.* (Mar. 19, 2010) (where the company's charter and existing New Jersey state law were found to substantially implement a proposal to permit shareholders to act by written majority consent). That is precisely the situation in the case at hand.

Moreover, the way in which the Bylaws currently address the Proposal's essential objective—allowing shareholders to repeal director-led bylaw amendments *ex-post*—is not without basis. The Company may need to act quickly to impose certain new requirements for the nomination of director candidates, including to comply with applicable law or as the directors, in their capacities as fiduciaries for the Company, determine is in the best interest of the Company.[2] As further described in Section IV, if there is a change in law (*e.g.,* new sanctions, antitrust law or securities regulation) that requires new disclosure for director candidates, the Company would need to be able to quickly amend the Bylaws to impose such new requirements in order to comply with the law, and it would be the duty of the directors under Delaware law to act in the best interest of the Company. The Proposal achieves the same result as the Company's existing mechanism for shareholder oversight, but imposes what amounts to an indeterminate delay on any action by the directors and potentially limits their ability to perform their fiduciary duties as directors. The

[2] Under Delaware law, directors of a corporation are subject to the fiduciary duties of care and loyalty. *See Guth v. Loft,* 5 A.2d 503 (Del. 1939) and *Smith v. Van Gorkem,* 488 A.2d 858 (1985).

Company believes that, by already providing shareholders with the right to vote on, and potentially repeal, any Bylaw amendments relating to director nominations, the Company's Bylaws already protect shareholder interests, while giving the Company flexibility to quickly adapt to changing laws and other corporate considerations, consistent with Delaware law.

Therefore, the Company respectfully requests that the Staff concur with its view that the Proposal may be excluded from the Company's 2023 Proxy Materials pursuant to Rule 14a-8(i)(10).

III. The Proposal Violates Rule 14a-8(c)'s Limit of One Proposal per Person.

On October 21, 2022, Mr. Chevedden submitted a shareholder proposal captioned "Report Greenhouse Gas Reduction Goals" to the Company for inclusion in the 2023 Proxy Materials for the 2023 Annual Meeting. *See* Exhibit D. Approximately one month later, on November 27, 2022, Mrs. Young sent an email to the Company, copying Mr. Chevedden's and Mr. McRitchie's email addresses, attaching a letter to the Company that included the Proposal and the Supporting Statement for inclusion in the 2023 Proxy Materials for the 2023 Annual Meeting. *See* Exhibit A. In that email, Mrs. Young designated Mr. Chevedden as her "agent regarding [the] Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting." She furthermore asked the Company to "direct all future communication regarding [the] rule 14a-8 proposal to James McRitchie […] and John Chevedden […] to facilitate prompt communication."

On December 2, 2022, the Company acknowledged receipt of the Proposal via email to the Proponents, reserving all rights with respect thereto. On December 6, 2022, Mr. McRitchie sent an email to the Company, copying Mr. Chevedden's and Mrs. Young's email addresses, with a broker letter from Ameritrade showing Mrs. Young's ownership of common shares of the Company in an account at TD Ameritrade. Correspondence between the Company and the Proponents is attached hereto as Exhibit B.

Rule 14a-8(c) states that (i) a person may submit no more than one proposal, directly *or indirectly*, to a company for a particular shareholders' meeting and (ii) a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. On September 23, 2020, the Commission adopted amendments to modify Rule 14a-8 in an effort to modernize shareholder proposal rules. With respect to Rule 14a-8(c), the SEC amended the rule by:

> "applying the one-proposal rule to 'each person' rather than 'each shareholder' who submits a proposal, such that a shareholder-proponent will not be permitted to submit one proposal in his or her own name *and simultaneously serve as a representative* to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, *a representative will not be permitted to submit more than*

one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders." Rule 14a-8(c).[3]

On December 8, 2022, the Company sent a deficiency notice (the "***Deficiency Notice***") to the Proponents, attached hereto as Exhibit E, notifying them that, under Rule 14a-8(c), Mr. Chevedden cannot serve as a representative for a different proposal on another shareholder's behalf if he has already submitted a shareholder proposal to the Company for the same shareholders' meeting. The Company also informed Mrs. Young that, under Rule 14a-8(f), she needed to remedy this deficiency by responding within 14 calendar days from the date she received the deficiency notice.

Later, on December 8, 2022, Mrs. Young sent an email to the Company, once more copying Mr. Chevedden's and Mr. McRitchie's email addresses, asking the Company to retract the Deficiency Notice and specify which rule prohibits Mrs. Young from naming Mr. Chevedden as one of her agents or prevents Mrs. Young from designating Mr. Chevedden to present the Proposal at the 2023 Annual Meeting. In that email, Mrs. Young stated: "Do you see who signed and submitted the proposal? That is my name in the signature block, not Mr. Chevedden's." Mrs. Young seemed to argue that the person who *signs* a shareholder proposal must be the sole person considered to have *submitted* the proposal, regardless of whether other persons are also listed in the header of the letter, copied in the original submission of the proposal and in all subsequent correspondence, named as agents and the principal points of contact, and granted broad authority to negotiate, amend, present and generally correspond with the Company regarding that proposal.

On December 12, 2022, the Company sent a response letter to the Proponents, copying once more the relevant language from Rule 14a-8(c), as amended, and explaining that, under Rule 14a-8(c), Mr. Chevedden cannot serve as a representative for a different proposal on another shareholder's behalf if he has already submitted a shareholder proposal to the Company for the same shareholders' meeting. The Company further explained that, in effect, by acting as agent and representative under the Proposal, Mr. Chevedden indirectly submitted two proposals for consideration at the same shareholders' meeting, which is prohibited by Rule 14a-8(c). Additionally, following the intent and purpose of Rule 14a-8(c) as amended, the Company explained that Mr. Chevedden cannot represent both himself and Mrs. Young for two different shareholder proposals at the same shareholders' meeting.

Later, on December 12, 2022, Mrs. Young sent an email to the Company, copying Mr. Chevedden's and Mr. McRitchie's email addresses, claiming to "revoke any authority previously delegated to John Chevedden regarding [the Proposal]," naming Mr. McRitchie as her agent for the Proposal and asking the Company to contact Mr. McRitchie for any further "negotiations, amendments, presentation, and any further correspondence." On December 14, 2022, the Company sent a response letter to Mrs. Young and Mr. McRitchie, restating the language of Rule 14a-8(c) and explaining that, although the Company continued to believe that Mr. Chevedden had indirectly submitted two proposals for consideration at the same shareholders' meeting, in

[3] *See also* "SEC Adopts Amendments to Modernize Shareholder Proposal Rule," Sept. 23, 2020, available at https://www.sec.gov/news/press-release/2020-220 (emphasis added); *see also* Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide at https://www.sec.gov/corpfin/procedural-requirements-resubmission-thresholds-guide.

violation of Rule 14a-8(c), as amended, the Company did not at that time intend to pursue no-action relief with the Commission on such grounds based on Mrs. Young's email on December 12, 2022 revoking Mr. Chevedden's authority, *provided that*, Mrs. Young did not subsequently reinstate Mr. Chevedden's authority, and that he did not engage as a proponent in advocating for or otherwise influencing the Proposal, consistent with the intent of Rule 14a-8(c).

Although we then assumed that this issue was behind us, on December 16, 2022, Mr. McRitchie sent an email to the Company directed at Mrs. Marina Breed, Vice President of Corporate Legal at the Company, copying Mr. Chevedden's and Mrs. Young's email addresses, attaching a letter with the following language:

> "I was going to let this issue of the shareholder's authority to select presenters slide, as indicated in my letter of December 12. However, given your letter of December 14, where you again mistakenly insist Mr. Chevedden indirectly submitted two proxy proposals, I now believe it is important to set the record straight. If an alum of Boston Law is making this mistake, I must assume at least a few others are also under the same impression. Mr. Chevedden did not submit two proposals."

Mrs. Young and Mr. McRitchie proceeded to attach what appears to be a "Legal Memorandum" from "Attorneys Sanford Lewis and Brittany Blanchard Goad" dated December 15, 2022, which pointed to the following language in the Commission's Release No. 34-89964:

> "Some commenters questioned whether the amendment, which addresses the submission of proposals, would affect a representative's ability to present proposals on behalf of multiple shareholder-proponents at the same shareholders' meeting. In order for shareholder proponents who have submitted a proposal for inclusion in a company's proxy statement to remain eligible to do so at the same company within the following two years, shareholder proponents must appear at the meeting and present their proposal. However, a shareholder proponent may satisfy this requirement by employing a representative who is qualified under state law to present the proposal on the proponent's behalf. The amendment is not intended to limit a representative's ability to present proposals on behalf of multiple shareholders at the same shareholders' meeting." Securities and Exchange Commission, 17 CFR Part 240, [Release No. 34-89964; File No. S7-23-19] (Sept. 23, 2020) (the "***2020 Release***"), at 60.

The letter ends by "reinstating Mr. Chevedden's authority to present [the] proposal at the upcoming annual shareholder meeting," while maintaining Mr. McRitchie as "agent for the proposal, including negotiations, amendments, presentation, and any further correspondence." As a result, this issue is unfortunately not behind us.

On September 23, 2020, the Commission adopted amendments to modify Rule 14a-8(c). As explained in the 2020 Release, one of the main goals of the one-proposal rule and its subsequent amendments was to curb the "possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit . . . proposals each in their own names." *Id.* at 57. The Commission recognized that, just as "proponents" attempt to evade the limitations of Rule 14a-8(c), so do "representatives." The 2020

Release expressly mentions that "the Commission's stated reasoning for the one-proposal limit applies equally to representatives who submit proposals on behalf of shareholders they represent. [They] believe permitting *representatives* to submit multiple proposals for the same shareholders' meeting can give rise to the same concerns about the expense and obscuring effect of including multiple proposals in the company's proxy materials, thereby undermining the purpose of the one-proposal limit." *Id.* at 58 (emphasis added). The 2020 amendments to Rule 14a-8(c) clearly state that "a shareholder-proponent will not be permitted to submit one proposal in his or her own name *and simultaneously serve as a representative* to submit a different proposal on another shareholder's behalf for consideration at the same meeting" (emphasis added).

The situation at hand is precisely the type of attempt to evade Rule 14a-8(c) that the 2020 amendments were trying to prohibit. Mr. Chevedden submitted a first proposal to the Company in his own name. Shortly thereafter, Mr. Chevedden participated in the submission of a second proposal to the Company. None of the Proponents has ever disputed that Mr. Chevedden served as agent and representative in the submission of the Proposal or that he had already submitted a different proposal to the Company in his own name; in fact, after seemingly acknowledging the validity of the Company's arguments and removing Mr. Chevedden as a representative, the Proponents subsequently retracted this action and reinstated Mr. Chevedden, making clear the importance of his participation with respect to the Proposal. As a result, the submission of the Proposal violated Rule 14a-8(c), as amended.

The Company furthermore believes that the Proponents' arguments in subsequent correspondence are mistaken in three ways: (1) first, their interpretation of the term "submit" is incorrectly narrow; (2) second, it is evident that Mr. Chevedden was behind the submission of the Proposal, in violation of Rule 14a-8(c); and (3) third, the Commission's background statements did not address the situation at hand and do not contradict the Company's interpretation of Rule 14a-8(c).

First, contrary to Mrs. Young's arguments, the term "submit" cannot be limited to the shareholder who a representative is representing or to the person who signs the submission letter. If that were the case, Rule 14a-8(c), enacted at least partly to curb the "possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit . . . proposals each in their own names" (*id.* at 57), and its 2020 amendments, where the SEC shifted its focus from "shareholders" and "proponents" to "persons" and "representatives" because "permitting representatives to submit multiple proposals for the same shareholders' meeting can give rise to the same concerns about the expense and obscuring effect of including multiple proposals in the company's proxy materials, thereby undermining the purpose of the one-proposal limit" (*id.* at 58), would lose all effect, for persons interested in submitting more than one proposal could easily obtain a shareholders' signature and submit as many proposals to the same company as they would like. The following sentence in the 2020 Release makes clear that a representative can also be considered to have "submitted" a proposal: "However, to the extent that the provider of such services *submits* a proposal, *either as a proponent or as a representative*, it will be subject to the one-proposal limit and will not be permitted to submit more than one proposal in total to the same company for the same meeting." *Id.* at 59 (emphasis added). By being copied in all correspondence, being included in the letter where the Proposal was submitted, and most importantly being named as the main

agent for the Proposal with broad agency powers, including negotiations, amendments, presentation and any further correspondence in connection with the Proposal, Mr. Chevedden should be deemed to also have submitted the Proposal, in violation of Rule 14a-8(c), as amended. The list of powers being delegated to Mr. Chevedden constitutes all of the principal powers of a shareholder proposal proponent. As explained above, one of the main goals of Rule 14a-8(c) and its amendments is to curb the "possibility that some proponents may attempt to evade the new limitations through various maneuvers, such as having other persons whose securities they control submit . . . proposals each in their own names." If only the person signing a shareholder proposal were to be regulated by Rule 14a-8(c), then Rule 14a-8(c) and its amendments would be helpless against persons using other shareholders' names to submit more than one proposal for consideration at the same meeting. The 2020 amendments focus on "representatives" and "persons," instead of "shareholders," to prohibit precisely the scenario at hand: where one person is attempting to submit more than one shareholder proposal by standing behind another persons' stock ownership.

Second, by designating Mr. Chevedden as the main agent for the Proposal and granting him broad agency authority upon submission of the Proposal, the Proponents revealed that Mr. Chevedden was in fact behind the submission of the Proposal. In their correspondence, the Proponents focus on the question of whether Mr. Chevedden can present the Proposal at the 2023 Annual Meeting. However, the Deficiency Notice and the Company's arguments instead focus on the fact that Mr. Chevedden *submitted* two shareholder proposals for inclusion in the 2023 Proxy Materials for the 2023 Annual Meeting, which is prohibited by Rule 14a-8(c). The question at hand is whether the Company must include the Proposal in the 2023 Proxy Materials, not who is to present which shareholder proposal at the 2023 Annual Meeting.

The Commission decided to amend Rule 14a-8 in order to "appropriately address the concerns [they] have with respect to the one-proposal limit." In other words, the 2020 amendments to Rule 14a-8(c) were intended to amend Rule 14a-8(c) in such a way as to prevent *persons* from submitting more than one shareholder proposal, directly *or indirectly*, as proponents *or representatives*, for consideration at the same shareholders' meeting. In the case at hand, regardless of whether or not Mr. Chevedden could present more than one shareholder proposal at a particular shareholders' meeting, Mr. Chevedden could not serve *as a representative in the submission* of a different proposal on another shareholder's behalf after having already submitted a shareholder proposal to the Company in his own name. The 2020 Release makes clear that, while Mr. Chevedden is entitled to provide Mrs. Young "assistance in navigating the shareholder-proposal process," he is not entitled to take part in the submission of a second shareholder proposal for consideration at the same shareholders' meeting. *Id.* at 51 (emphasis added).

In fact, the language in the original submission as well as the historical relationship between Mr. Chevedden, Mrs. Young and Mr. McRitchie make evident that Mr. Chevedden was involved in the submission of the Proposal to the point of being considered not only a representative of Mrs. Young, but also a shareholder-proponent himself. For instance, the Commission has previously instructed that "[t]he *contact information* and availability must be the shareholder-proponent's, and not that of the shareholder's representative, if any." *Id.* (emphasis added). In the case at hand, the original submission included only Mr. Chevedden's and Mr. McRitchie's contact information, and not Mrs. Young's contact information. Mrs. Young

specifically instructed the Company to direct all communication regarding the Proposal to Mr. Chevedden and Mr. McRitchie. Furthermore, as the Staff is aware, Mr. Chevedden submits dozens of shareholder proposals each proxy season, sometimes in the guise of a shareholder and sometimes in the guise of a representative. In the 2021 proxy season, associates of Mr. Chevedden, which include Mrs. Young, Mr. McRitchie, Kenneth Steiner and Willian Steiner, submitted 252 shareholder proposals, which accounted for nearly one-third of all shareholder proposals submitted during that proxy season.[4] Similarly, in 2018, 41% of shareholder proposals submitted to companies in the S&P 1500 were submitted by Mr. Chevedden and his associates.[5] The relationship between Mr. Chevedden and Mrs. Young and her husband, Mr. McRitchie, is well-known to many public corporations, the Staff and the Commission. Importantly, Mrs. Young's and Mr. McRitchie's webpage itself, CorpGov.net, dubbed the group comprising Mr. Chevedden, Mrs. Young, Mr. McRitchie and the Steiner family the "*Chevedden* group," calls proposals backed by any member of the group "*Chevedden* group proposals," and refers to the group as a collective, acting in unison:

> "For years, the '*Chevedden* group' (Chevedden, McRitchie/Young and Steiner) has focused almost exclusively on governance proposals. […] *Chevedden group proposals* seek to declassify boards, require majority votes to elect directors, allow proxy access, and allow shareholders to call special meetings. […] More than 50 of *our* proposals never made it to the proxy. […] I expect *we* will refile at many of the offending companies. […] While the Chevedden group is not done with corporate governance proposals, we recognize democracy must be won on many fronts. *What types of proposals would you like to see the Chevedden group submit*?"[6]

The language used by Mr. McRitchie clearly indicates that he and Mrs. Young act in unison with Mr. Chevedden, and that *Mr. Chevedden is the leader of the group*. The Company strongly believes that this language, published in Mrs. Young's and Mr. McRitchie's own webpage, in connection with the other arguments presented above, provides sufficient evidence that Mr. Chevedden at least partly spearheaded the submission of the Proposal, in violation of Rule 14a-8(c) even under its original formulation.

Third, contrary to what is laid out in the Proponent's correspondence and in the "Legal Memorandum" dated December 15, 2022, the Commission's background statements did not address the situation at hand and do not contradict the Company's interpretation of Rule 14a-8(c), as amended. Although the citation provided in the "Legal Memorandum" was copied from the 2020 Release, the context of the citation makes clear that such statements were meant to address scenarios different from the one at hand. The citation in question refers to "a representative's ability to present proposals on behalf of multiple shareholder-proponents at the same shareholders' meeting." As the Staff is aware, there exist professional parties that serve as representatives for shareholder clients at shareholders' meetings. These professional parties are not generally

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[4] *See* 2021 Annual Corporate Governance Review, available at https://www.georgeson.com/us/news-insights/annual-corporate-governance-review.
[5] *See* K. Kastiel & Y. Nili, *The Giant Shadow of Corporate Gadflies* (2020), available at https://www.sec.gov/comments/s7-23-19/s72319-6733874-207512.pdf, at 19.
[6] J. McRitchie, *Chevedden Group Proxy Proposals*, Oct. 31, 2018, available at https://www.corpgov.net/2018/10/chevedden-group-proxy-proposals/ (emphasis added).

shareholders themselves, and oftentimes represent more than one shareholder at the same shareholders' meeting. The Company understands that, in the citation in question, the Commission was referring to a scenario where a professional representative is employed to attend a shareholders' meeting and present a shareholder proposal on behalf of more than one shareholder client. The 2020 Release makes this clear by using words such as "client" and "provider of such services." The statements in question were not in response to a scenario, like the one at hand, where one shareholder that already submitted a proposal is simultaneously serving as a representative for another shareholder proposal in order to circumvent Rule 14a-8(c). On the contrary, the scenario at hand is precisely what the Commission was attempting to prohibit when it stated that "a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders."

Pursuant to Rule 14a-8(f)(1), a company may exclude a proposal from its proxy materials if the proponent fails to correct a procedural deficiency, provided that the company properly notified the proponent of the deficiency and the proponent failed to adequately correct it. When a deficiency based on Rule 14a-8(c) is identified, the Staff has historically recommended no action if (i) the second shareholder proposal is excluded (*see, e.g.*, *Noble Roman's, Inc.* (Mar. 12, 2010) ("Accordingly, we will not recommend enforcement action to the Commission if Noble Roman's omits the second proposal from its proxy materials in reliance on rule 14a-8(c)") or, (ii) even more commonly, if *all* shareholder proposals in question are excluded (*see, e.g.*, *Bank of America Corporation*, *Textron Inc.* and *The Goldman Sachs Group, Inc.* (Mar. 7, 2012) (concurring in the exclusion of entire submissions under Rule 14a-8(c) because they contained two separate proposals); *PSB Group, Inc.* (Feb. 23, 2010) ("Accordingly, we [will] not recommend enforcement action to the Commission if PSB Group excludes *the proposals* from its proxy materials in reliance on rule 14a-8(c)" (emphasis added)); *International Business Machines Corporation* (Jan. 26, 2011) ("Accordingly, we will not recommend enforcement action to the Commission if IBM omits *the proposals* from its proxy materials in reliance on rule 14a-8(c)" (emphasis added)); *Staten Island Bancorp, Inc.* (Feb. 27, 2002) (concurring in the exclusion under Rule 14a-8(c) of five shareholder proposals initially submitted by the same proponent); and *Spartan Motors, Inc.* (Mar. 12, 2001) (concurring in the exclusion under Rule 14a-8(c) of two proposals under Rule 14a-8(c) that were initially submitted by the same proponent)). The Company has provided the Proponents with ample opportunity to remedy this deficiency, and has invested a great deal of time and resources in dealing with this situation to date, which is not in the best interest of shareholders. The Proponents did not adequately cure the deficiency identified by the Company in the Deficiency Notice, and in fact reinforced this deficiency in its last correspondence with the Company, reaffirming that Mr. Chevedden participated in the submission of more than one shareholder proposal for consideration at the same shareholders' meeting and no shareholder proposal submitted by Mr. Chevedden has been withdrawn.

Therefore, the Company respectfully requests that the Staff concur with its view that the Proposal may be excluded from the Company's 2023 Proxy Materials pursuant to Rule 14a-8(f).

IV. The Proposal, if Implemented, Would Cause the Company to Violate Delaware Law, and May Cause the Company to Violate Future Federal Or State Laws.

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal "[i]f the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In the present case, the Proposal, if implemented, would cause the Company to violate Delaware state law for the reasons set forth in the legal opinion provided by Richards, Layton & Finger, PA, attached hereto as Exhibit F, and it may cause the Company to violate future applicable state or federal law for the reasons set forth below.

First, the Staff has previously concurred with the exclusion of shareholder proposals where the proposal, if implemented, would be inconsistent with the company's certificate of incorporation, thereby violating state law. For example, in *Advanced Photonix, Inc.* (May 15, 2014), a shareholder proposal requested the adoption of a proxy access bylaw that could only be amended by a shareholder vote. In that case, the Staff granted no-action relief under Rule 14a-8(i)(2), concurring with the submitted opinion of counsel that "implementation of the proposal would cause [the company] to violate state law because the proposed bylaw would conflict with [the company's] certificate of incorporation." *See also CVS Caremark Corp.* (Mar. 9, 2010, *recon. denied* Mar. 17, 2010) (concurring with the exclusion of a proposal seeking a bylaw amendment that would require the board chair to be an independent director and could only be amended by stockholders because such a provision would conflict with the certificate of incorporation, which gave the board authority to amend the bylaws); *and Weirton Steel Corp.* (Mar. 14, 1995) (concurring with the exclusion of a proposed bylaw amendment requiring independent director vacancies to be filled by an election of shareholders where the certificate called for board vacancies to be filled solely by a vote of directors).

Here, the Proposal seeks to subject certain director-led Bylaw amendments to shareholder approval, in effect removing the Company's board of directors' ability to amend the Bylaws in certain circumstances. Article EIGHTH of the Company's Restated Certificate of Incorporation (the "***Certificate of Incorporation***") states that, "[i]n furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, amend, and repeal the By-Laws." A copy of the Certificate of Incorporation is attached hereto as Exhibit G. This power granted to the Company's board of directors is in accordance with Section 109 of the DGCL, which empowers boards of directors to unilaterally adopt, amend and repeal companies' bylaws and does not impose any limitation on boards' power to adopt, amend or repeal companies' bylaws. As drafted, the Proposal presents a conflict between the proposed bylaw provision and the Certificate of Incorporation, and "[a]ny bylaw provision that contradicts the certificate of incorporation is invalid and a 'nullity' under the [Corporation Law of the State of Delaware]." *Gaskill v. Gladys Belle Oil Co.*, 146 A. 337, 340 (Del. Ch. 1929); *see also Airgas, Inc. v. Air Prods. & Chems., Inc.*, 8 A.3d 1182, 1189 (Del. 2010) ("It is settled Delaware law that a bylaw that is inconsistent with the corporation's charter is invalid."). Moreover, the Proposal, if adopted, "would essentially eliminate[] the Board's authority to adopt, amend or repeal the Bylaws unilaterally by conditioning the effectiveness of a Board-adopted bylaw […] which is impermissible under Delaware law." *Centaur Partners, IV v. Nat'l Intergroup, Inc.*, 582 A.2d 923, 929 (Del. 1990) (holding that a proposed bylaw amendment to fix the size of the board at a specific number was invalid because it was "clearly 'inconsistent with' the directors' power to enlarge the board without limit" under the company's certificate of incorporation).

Second, Prong 2 and Prong 3, if implemented, may cause the Company to violate future applicable state or federal law. Prong 2 seeks shareholder approval for any advance notice bylaw amendments that "impose new disclosure requirements for director nominees, including disclosures related to past and future plans." Prong 3 seeks shareholder approval for any advance notice bylaw amendments that "require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's share." As discussed above, the language in Prong 2 that provides for "new disclosure requirements for director nominees" is such a broad specification that it could include *any* information that director nominees are asked to provide to the Company. Similarly, the language in Prong 3 that states "disclose limited partners or business associates" does not impose any limit on the information about the applicable limited partners or business associates that nominating directors are asked to provide to the Company. Both Prong 2 and 3 could capture a very broad and uncertain scope of information, for example sanctions, anti-corruption or anti-money laundering-related information that applicable state or federal laws might require the Company to disclose about its directors or directors' business associates in the near future.

The Proposal does not allow for any exceptions to the requests set forth in Prong 2 and Prong 3, even if the Company is required by law to ask director nominees to provide additional disclosure or nominating shareholders to provide certain disclosure regarding their limited partners or business associates. The Proposal differs from other seemingly similar shareholder proposals that *do* allow for exceptions when applicable law so requires. *See, e.g.*, *Hewlett Packard Enterprise Company* (request submitted Nov. 22, 2019) (shareholder proposal stating that "[i]f for some reason state law would restrict this shareholder approval provision then this proposal would call for a non-binding shareholder vote as soon as practical on any amendment to the bylaws that is adopted by the board"). The Company already collects information from director nominees and nominating shareholders for a variety of reasons, including pursuant to legal requirements—whether statutory or in order to ensure that the Company does not appoint a director who, for example, is conflicted or whose serving as a director may cause the Company to violate state laws or federal statutes such as the Clayton Act. It is entirely conceivable that a change in federal or state law will require public companies to collect new information from director nominees or nominating shareholders, and if the Proposal were to be approved in its current form, the Company would not be able to comply with such law.

In case of a change in law or new regulation that requires the Company to request additional disclosure from director nominees or disclosure of limited partners or business associates of nominating shareholders (even if they own less than 5% of the Company's shares), to avoid violating such law or regulation, the Company must be able to adopt amendments to its bylaws to implement these laws or regulations. Were such amendments to be subject to a shareholder vote, as the Proposal demands, shareholders would effectively be voting on whether the Company chooses to follow or violate the law. The Company cannot risk breaking the law or afford to wait for a shareholder vote in order to implement a new law or regulation of this kind.

Therefore, the Company respectfully requests that the Staff concur with its view that the Proposal may be excluded from the Company's 2023 Proxy Materials pursuant to Rule 14a-8(i)(2).

CONCLUSION

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 Proxy Materials.

Sincerely,

Marina Breed
Vice President, Corporal Legal
617-585-7770
Marina.Breed@americantower.com

cc: Francesca Odell, Cleary Gottlieb Steen & Hamilton LLP
Craig Brod, Cleary Gottlieb Steen & Hamilton LLP
Edmund DiSanto
Ruth Dowling
Michael John McCormack
Myra K.Young
James McRitchie
John Chevedden

EXHIBIT A

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Myra K. Young & James McRitchie
[redacted]

Mr. Edmund DiSanto <Ed.DiSanto@AmericanTower.com>
Corporate Secretary
American Tower Corporation (AMT)
116 Huntington Ave
11th Floor
Boston MA 02116
PH: 617 375-7500
FX: 617 375-7575
PH: 617-585-7738
cc: Mneesha Nahata <Mneesha.Nahata@AmericanTower.com> Leah C. Stearns <ir@americantower.com>

Attention: Edmund DiSanto or current Corporate Secretary

I am submitting the attached shareholder proposal, which I support, requesting Fair Elections in bylaw provisions for presentation at the next shareholder meeting. I pledge to continue to hold the required amount of stock until after the date of that meeting.

I will meet Rule 14a-8 requirements including the continuous ownership of the required stock until after the date of the next shareholder meeting. I have owned the stock continuously since 2010. My submitted format, with the shareholder-supplied emphasis and graphic, is intended to be used for definitive proxy publication.

I am available to meet with the Company representative via phone or Zoom on December 16 at 8:00 am, 8:30 pm Pacific, or at another time that is mutually convenient to discuss the proposal.

This letter confirms I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting. Any agreed upon amendments will be submitted by me. My husband, James McRitchie is hereby authorized as Mr. Chevedden's backup. Please direct all future communications regarding my rule 14a-8 proposal to James McRitchie at [redacted] and John Chevedden (PH: [redacted]) at: [redacted] to facilitate prompt communication. Please identify Myra K. Young as the proponent of the proposal exclusively.

Your consideration and that of the Board of Directors are appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [redacted] with a cc to [redacted], also letting me know if you wish to meet on December 8. That will prompt me to request the required letter from my broker and to submit it to the Company.

Sincerely,

Myra K. Young

11/27/2022

Myra K. Young

Date

[AMT: Rule 14a-8 Proposal, November 27, 2022]
[This line and any line above it – *Not* for publication.]

Proposal [4*] – Fair Elections

Resolved

Myra K. Young and other shareholders request that directors of American Tower Corporation ("Company") amend its bylaws to include the following language:

Shareholder approval is required for any advance notice bylaw amendments that:

1. require nomination of candidates more than 90 days before the annual meeting,

2. impose new disclosure requirements for director nominees, including disclosures related to past and future plans, or

3. require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's shares.

Supporting Statement

Under SEC Rule 14a-19, the universal proxy card must include all director nominees presented by management and shareholders for election.[1] Although the Rule implies each side's nominees must be grouped together and clearly identified as such, in a fair and impartial manner, most rules for director elections are set in company bylaws.

For Rule 14a-19 to be implemented equitably, boards must not undertake bylaw amendments that deter legitimate efforts by shareholders to submit nominees. The bylaw amendments set forth in the proposed resolution would presumptively deter legitimate use of Rule 14a-19 by deterring legitimate efforts by shareholders to seek board representation through a proxy contest.

The power to amend bylaws is shared by directors and shareholders. Although directors have the power to adopt bylaw amendments, shareholders have the power to check that authority by repealing board-adopted bylaws. Directors should not amend the bylaws in ways that inequitably restrict shareholders' right to nominate directors. This resolution simply asks the board to commit not to amend the bylaws to deter legitimate

[1] https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.14a-19

efforts to seek board representation, without submitting such amendments to shareholders. We urge the Board not to further amend its advance notice bylaws until shareholders have at least voted on this proposal.

Bloomberg's Matt Levine speculates bylaws might require disclosure submissions "on paper woven from unicorns' manes,"[2] with requirements waived for the board's nominees. While Mr. Levine depicts humorous and exaggerated possibilities, some companies are adopting amendments clearly designed to discourage fair elections.

Directors of at least one company (Masimo Corp.) recently adopted bylaw amendments that could deter legitimate efforts by shareholders to seek board representation through a proxy contest. Masimo's advance notice bylaws "resemble the 'nuclear option' and offers a case study in how rational governance devices can become unduly weaponized, writes Lawrence Cunningham.[3] Directors of other companies are considering similar proposals.

To ensure shareholders can vote on any proposal that would impose inequitable restrictions, we urge a vote FOR Fair Elections.

To Enhance Shareholder Value, Vote FOR
Fair Elections – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2023 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference: SEC Staff Legal Bulletin No. 14I (CF)[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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[2] https://www.bloomberg.com/opinion/articles/2022-10-27/credit-suisse-gives-first-boston-gets-a-second-chance?sref=a7KhiWzs

[3] https://corpgov.law.harvard.edu/2022/10/23/the-hottest-front-in-the-takeover-battles-advance-notice-bylaws/

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(i)(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 to [redacted].

EXHIBIT B

From: Marina Breed
To: James McRitchie
Cc: Ed DiSanto; Ruth Dowling; Michael McCormack; John Chevedden; Sanford Lewis [redacted]
Subject: RE: (AMT) FE Proposal
Date: Tuesday, December 20, 2022 12:05:00 PM

Dear Mr. McRitchie,

We acknowledge receipt of your letter, refer you to our prior correspondence on this matter, and reserve all rights with respect thereto.

Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * *

From: James McRitchie <[redacted]>
Sent: Friday, December 16, 2022 5:32 PM
To: Marina Breed <Marina.Breed@americantower.com>
Cc: Ed DiSanto <Ed.DiSanto@AmericanTower.com>; Ruth Dowling <ruth.dowling@AmericanTower.com>; Michael McCormack <Michael.McCormack@AmericanTower.com>; James McRitchie <[redacted]>; John Chevedden <[redacted]>; Sanford Lewis <[redacted]>; [redacted]
Subject: (AMT) FE Proposal

This Message Is From an External Sender
This message came from outside your organization.

Dear Ms. Breed,

Please read and acknowledge receipt of the attached letter regarding my wife's authority to delegate Mr. Chevedden to present her proposal. I hope we can put this issue behind us and move

on to the substance of the proposal.

James McRitchie, Boston College alum &
Shareholder Advocate
Corporate Governance
[redacted]

From: James McRitchie
To: Marina Breed
Cc: Investor Relations; John Chevedden; Ed DiSanto; Ruth Dowling; Michael McCormack
Subject: Re: AMT Shareholder Proposal
Date: Friday, December 2, 2022 6:44:28 PM

This Message Is From an Untrusted Sender
You have not previously corresponded with this sender.

Thanks for acknowledging receipt. We have requested the required evidence of ownership, which we expect to forward to you early next week.

James McRitchie
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
[redacted]

[redacted]

On Dec 2, 2022, at 2:58 PM, Marina Breed <Marina.Breed@americantower.com> wrote:

Dear Ms. Young,

We acknowledge receipt of your proposal, and reserve all rights with respect thereto.

Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * * *

Thank you for your cooperation.

From: James McRitchie
To: Marina Breed
Cc: Investor Relations; John Chevedden; Ed DiSanto; Ruth Dowling; Michael McCormack; mky
Subject: Re: AMT Shareholder Proposal
Date: Tuesday, December 6, 2022 3:32:52 PM
Attachments: Young_AMT.pdf

As promised, attached is the broker letter. Please find and acknowledge receipt.
James McRitchie
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
[redacted]

> On Dec 2, 2022, at 3:44 PM, James McRitchie <[redacted]> wrote:
>
> Thanks for acknowledging receipt. We have requested the required evidence of ownership, which we expect to forward to you early next week.
>
> James McRitchie
> Shareholder Advocate
> Corporate Governance
> http://www.corpgov.net
> [redacted]
>
> > On Dec 2, 2022, at 2:58 PM, Marina Breed <Marina.Breed@americantower.com> wrote:
> >
> > Dear Ms. Young,
> >
> > We acknowledge receipt of your proposal, and reserve all rights with respect thereto.

Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * *

12/06/2022

Myra K Young
[redacted]

Re: Your Position in American Tower Corporation (AMT)

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held and has held continuously since 6/1/12, 50 common shares of American Tower Corporation (AMT) in an account 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,

Madeline O'Donnell

Madeline O'Donnell
Resource Specialist
TD Ameritrade

TDA 1002212 11/21

December 8, 2022

VIA EMAIL

Mr. John Chevedden
[redacted]
Email: [redacted]
Phone: [redacted]

Mr. James McRitchie and Mrs. Myra K. Young
[redacted]
Email: [redacted]

Dear Mrs. Young:

I am writing about your letter dated November 27, 2022, addressed to Edmund DiSanto, Corporate Secretary of American Tower Corporation (the "***Company***"), regarding a shareholder proposal captioned "Fair Elections" (your "***Proposal***").

Before the Company can process your shareholder proposal, you need to remedy the deficiency identified in this letter so that your proposal satisfies the eligibility requirements of Rule 14a-8 under the Securities Exchange Act of 1934 ("***Rule 14a-8***"), as amended.

Rule 14a-8(c) states that (i) a person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting and (ii) a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. The SEC has clarified that this means that a shareholder-proponent cannot submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, a representative cannot submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.[1]

On October 21, 2022, Mr. John Chevedden submitted a shareholder proposal captioned "Report Greenhouse Gas Reduction Goals" to the Company. In your Proposal, you designate Mr.

[1] *See* Rule 14a-8(c); *see also* Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide at https://www.sec.gov/corpfin/procedural-requirements-resubmission-thresholds-guide.

Chevedden as your agent and representative. However, under Rule 14a-8(c), Mr. Chevedden cannot serve as a representative for a different proposal on another shareholder's behalf if he has already submitted a shareholder proposal to the Company for the same shareholders' meeting. Under Rule 14a-8(f), you must remedy this deficiency by responding *within 14 calendar days* from the date you receive this letter.

I am enclosing a copy of Rule 14a-8, in case that is helpful for you.

If you require any additional information or if you would like to discuss this matter, please call me at 617-375-7500. Thank you.

Very truly yours,

Marina Breed
Vice President, Corporate Legal

cc: Edmund DiSanto
Ruth Dowling
Michael J. McCormack

From:	mky
To:	Marina Breed
Cc:	John Chevedden; Ed DiSanto; Ruth Dowling; Michael McCormack; James McRitchie; Sanford Lewis
Subject:	Re: AMT Stockholder Proposal
Date:	Thursday, December 8, 2022 12:13:47 PM
Attachments:	(AMT) Shareholder proposal.msg AMT FE submit.pdf

Ms. Breed

Please retract your deficiency letter of December 8th, which appears to be based on a misinterpretation of the word “submit" as used in Rule 14a-8(c). As you yourself reference in your letter to me, the subject rule states:

"Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.”

The fact that Mr. Chevedden may have submitted a proposal has no bearing on my submission or my naming him as an agent. Please review the attached email and letter submitting my proposal to AMT. Do you see who signed and submitted the proposal? That is my name in the signature block, not Mr. Chevedden's.

If you do believe there is a deficiency, please be more specific. What in the rule prohibits me from naming Mr. Chevedden as one of my agents or prevents me from designating him to present my proposal at the upcoming AGM?

Sincerely,

MK Young, Shareholder Advocate
CorpGov.net

> On Dec 8, 2022, at 5:54 AM, Marina Breed <Marina.Breed@americantower.com> wrote:
>
> Dear Mrs. Young,
>
> Please see the attached notice.
>
> Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * *

<AMT - Ownership Defect Notice to Young (12.08.22).pdf><Rule 14a-8 Shareholder Proposals.pdf>

December 12, 2022

VIA EMAIL

Mr. John Chevedden
[redacted]
Email: [redacted]
Phone: [redacted]

Mr. James McRitchie and Mrs. Myra K. Young
[redacted]
Email: [redacted]
Email: [redacted]

Dear Mrs. Young:

I am writing with respect to your email dated December 8, 2022, addressed to me, Vice President, Corporate Legal of American Tower Corporation (the "***Company***"), regarding a shareholder proposal captioned "Fair Elections" (your "***Proposal***").

As you mention in your email, Rule 14a-8(c) under the Securities Exchange Act of 1934 states that (i) a person may submit no more than one proposal, directly *or indirectly*, to a company for a particular shareholders' meeting and (ii) a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. With respect to (i), note that the term "submit" is qualified by the terms "directly or indirectly."

On October 21, 2022, Mr. John Chevedden submitted a shareholder proposal captioned "Report Greenhouse Gas Reduction Goals" to the Company. In your Proposal, you designate Mr. Chevedden as your agent and representative, and ask that all future communications be directed to him and Mr. McRitchie. In effect, by acting as agent and representative under your Proposal, Mr. Chevedden indirectly submitted two proposals for consideration at the same shareholders' meeting, which is prohibited by Rule 14a-8(c).

As we indicated in our prior correspondence, on September 23, 2020, the SEC adopted amendments to modify Rule 14a-8 in an effort to modernize shareholder proposal rules. With respect to Rule 14a-8(c), the SEC amended the rule by:

> "applying the one-proposal rule to 'each person' rather than 'each shareholder' who submits a proposal, such that a shareholder-proponent will not be permitted to submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, a representative will not be permitted to submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders."[1]

In your Proposal, you designate Mr. Chevedden as your agent and representative, "including [for] presentation at the forthcoming shareholder meeting." However, under Rule 14a-8(c), Mr. Chevedden cannot serve as a representative for a different proposal on another shareholder's behalf if he has already submitted a shareholder proposal to the Company for the same shareholders' meeting. Additionally, following the intent and purpose of Rule 14a-8(c) as amended, Mr. Chevedden cannot represent both himself and you for two different shareholder proposals at the same shareholders' meeting.

As mentioned in our letter dated December 8, 2022, under Rule 14a-8(f) you must remedy this deficiency by responding *within 14 calendar days* from the date you received the Company's notification of the deficiency. I am enclosing a copy of Rule 14a-8, in case that is helpful for you.

If you require any additional information or if you would like to discuss this matter, please call me at 617-375-7500. Thank you.

Very truly yours,

Marina Breed
Vice President, Corporate Legal

cc: Edmund DiSanto
Ruth Dowling
Michael J. McCormack

[1] *See* Rule 14a-8(c); *see also* "SEC Adopts Amendments to Modernize Shareholder Proposal Rule," Sept. 23, 2020, at https://www.sec.gov/news/press-release/2020-220; *see also* Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide at https://www.sec.gov/corpfin/procedural-requirements-resubmission-thresholds-guide.

From: mky
To: Marina Breed
Cc: John Chevedden; Ed DiSanto; Ruth Dowling; Michael McCormack; James McRitchie
Subject: Re: AMT Stockholder Proposal
Date: Monday, December 12, 2022 5:00:10 PM
Attachments: AMT FE 2023 revised delegation.pdf

Dear Ms. Breed:

I hereby revoke any authority previously delegated to John Chevedden regarding my 11/27/2022 shareholder proposal on “Fair Elections.” Please contact my husband, James McRitchie, who will act as my agent for the proposal, including negotiations, amendments, presentation, and any further correspondence. I have also attached evidence of the required ownership and a copy of the previously submitted proposal.

Please let me know if this removes your deficiency concerns.

MK Young, Shareholder Advocate
CorpGov.net

On Dec 12, 2022, at 1:25 PM, Marina Breed <Marina.Breed@americantower.com> wrote:

Dear Mrs. Young,

Please see the attached letter.

Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * * *

<AMT - Second Letter to Young (12.12.22).pdf><Rule 14a-8 Shareholder Proposals.pdf>

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

Myra K. Young & James McRitchie
[redacted]

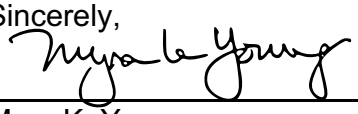
Marina Breed
Vice President, Corporate Legal
American Tower Corporation (AMT)
116 Huntington Ave
11th Floor
Boston MA 02116
PH: 617 375-7500
FX: 617 375-7575
PH: 617-585-7738
Via: Marina.Breed@americantower.com
cc: Ed DiSanto <Ed.DiSanto@AmericanTower.com>, Ruth Dowling <ruth.dowling@AmericanTower.com>, Michael McCormack Michael.McCormack@AmericanTower.com, James McRitchie [redacted]>, John Chevedden [redacted]

Dear Ms. Breed:

I hereby revoke any authority previously delegated to John Chevedden regarding my 11/27/2022 shareholder proposal on “Fair Elections.” Please contact my husband, James McRitchie, who will act as my agent for the proposal, including negotiations, amendments, presentation, and any further correspondence. I have also attached evidence of the required ownership and a copy of the previously submitted proposal.

Please let me know if this removes your deficiency concerns.

Sincerely,



Myra K. Young — 12/12/2022

Myra K. Young — Date

TD Ameritrade

12/06/2022

Myra K Young
[redacted]
[redacted]

Re: Your Position in American Tower Corporation (AMT)

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held and has held continuously since 6/1/12, 50 common shares of American Tower Corporation (AMT) in an account 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,

Madeline O'Donnell

Madeline O'Donnell
Resource Specialist
TD Ameritrade

TDA 1002212 11/21

[AMT: Rule 14a-8 Proposal, November 27, 2022]
[This line and any line above it – *Not* for publication.]

Proposal [4*] – Fair Elections

Resolved

Myra K. Young and other shareholders request that directors of American Tower Corporation ("Company") amend its bylaws to include the following language:

Shareholder approval is required for any advance notice bylaw amendments that:

1. require nomination of candidates more than 90 days before the annual meeting,

2. impose new disclosure requirements for director nominees, including disclosures related to past and future plans, or

3. require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's shares.

Supporting Statement

Under SEC Rule 14a-19, the universal proxy card must include all director nominees presented by management and shareholders for election.[1] Although the Rule implies each side's nominees must be grouped together and clearly identified as such, in a fair and impartial manner, most rules for director elections are set in company bylaws.

For Rule 14a-19 to be implemented equitably, boards must not undertake bylaw amendments that deter legitimate efforts by shareholders to submit nominees. The bylaw amendments set forth in the proposed resolution would presumptively deter legitimate use of Rule 14a-19 by deterring legitimate efforts by shareholders to seek board representation through a proxy contest.

The power to amend bylaws is shared by directors and shareholders. Although directors have the power to adopt bylaw amendments, shareholders have the power to check that authority by repealing board-adopted bylaws. Directors should not amend the bylaws in ways that inequitably restrict shareholders' right to nominate directors. This resolution simply asks the board to commit not to amend the bylaws to deter legitimate

[1] https://www.ecfr.gov/current/title-17/chapter-II/part-240/section-240.14a-19

efforts to seek board representation, without submitting such amendments to shareholders. We urge the Board not to further amend its advance notice bylaws until shareholders have at least voted on this proposal.

Bloomberg's Matt Levine speculates bylaws might require disclosure submissions "on paper woven from unicorns' manes,"[2] with requirements waived for the board's nominees. While Mr. Levine depicts humorous and exaggerated possibilities, some companies are adopting amendments clearly designed to discourage fair elections.

Directors of at least one company (Masimo Corp.) recently adopted bylaw amendments that could deter legitimate efforts by shareholders to seek board representation through a proxy contest. Masimo's advance notice bylaws "resemble the 'nuclear option' and offers a case study in how rational governance devices can become unduly weaponized, writes Lawrence Cunningham.[3] Directors of other companies are considering similar proposals.

To ensure shareholders can vote on any proposal that would impose inequitable restrictions, we urge a vote FOR Fair Elections.

To Enhance Shareholder Value, Vote FOR
Fair Elections – Proposal [4*]

[This line and any below are *not* for publication]
Number 4* to be assigned by Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and/or accompanying bold or highlighted management text with a graphic, box or shading) or any highlighted management executive summary used in conjunction with a management proposal or any other rule 14a-8 shareholder proposal in the 2023 proxy.

The proponent is willing to discuss the mutual elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference: SEC Staff Legal Bulletin No. 14I (CF)[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

---

[2] https://www.bloomberg.com/opinion/articles/2022-10-27/credit-suisse-gives-first-boston-gets-a-second-chance?sref=a7KhiWzs

[3] https://corpgov.law.harvard.edu/2022/10/23/the-hottest-front-in-the-takeover-battles-advance-notice-bylaws/

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(i)(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 to [redacted]

AMERICAN TOWER®
CORPORATION

December 14, 2022

VIA EMAIL

Mr. James McRitchie and Mrs. Myra K. Young
[redacted]
Email: [redacted]
Email: [redacted]

Dear Mrs. Young:

I am writing with respect to your email dated December 12, 2022, addressed to me, Vice President, Corporate Legal of American Tower Corporation (the "***Company***"), regarding a shareholder proposal captioned "Fair Elections" (your "***Proposal***").

As you confirmed in your email dated December 8, 2022, Rule 14a-8(c) under the Securities Exchange Act of 1934 states that (i) a person may submit no more than one proposal, directly *or indirectly*, to a company for a particular shareholders' meeting and (ii) a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

The Company continues to believe that Mr. Chevedden has indirectly submitted two proposals for consideration at the same shareholders' meeting, in violation of Rule 14a-8(c), as amended on September 23, 2020; however, the Company does not currently intend to pursue no-action relief with the Securities and Exchange Commission on such grounds based on your email on December 12, 2022 revoking Mr. Chevedden's authority; *provided that*, you do not reinstate Mr. Chevedden's authority, and that he does not engage as a proponent in advocating for or otherwise influencing your Proposal.

If you require any additional information or if you would like to discuss this matter, please call me at 617-375-7500. Thank you.

Very truly yours,

Marina Breed
Vice President, Corporate Legal

cc: Edmund DiSanto
Ruth Dowling
Michael J. McCormack

From:	James McRitchie
To:	Marina Breed
Cc:	Ed DiSanto; Ruth Dowling; Michael McCormack; James McRitchie; John Chevedden; Sanford Lewis; [redacted]
Subject:	(AMT) FE Proposal
Date:	Friday, December 16, 2022 5:37:25 PM
Attachments:	AMT FE 2023 rebutting misinformaiton.pdf

Dear Ms. Breed,

Please read and acknowledge receipt of the attached letter regarding my wife's authority to delegate Mr. Chevedden to present her proposal. I hope we can put this issue behind us and move on to the substance of the proposal.

James McRitchie, Boston College alum &
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
[redacted]

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Myra K. Young & James McRitchie
[redacted]

Marina Breed
Vice President, Corporate Legal
American Tower Corporation (AMT)
116 Huntington Ave
11th Floor
Boston MA 02116
PH: 617 375-7500
FX: 617 375-7575
PH: 617-585-7738
Via: Marina.Breed@americantower.com
cc: Ed.DiSanto@AmericanTower.com, ruth.dowling@AmericanTower.com,
Michael.McCormack@AmericanTower.com, [redacted]

Dear Ms. Breed:

I was going to let this issue of the shareholder's authority to select presenters slide, as indicated in my letter of December 12. However, given your letter of December 14, where you again mistakenly insist Mr. Chevedden indirectly submitted two proxy proposals, I now believe it is important to set the record straight. If an alum of Boston Law is making this mistake, I must assume at least a few others are also under the same impression. Mr. Chevedden did not submit two proposals.

For the benefit of your understanding, I requested and have attached a legal memo on this subject.

I am hereby reinstating Mr. Chevedden's authority to present my proposal at the upcoming annual shareholder meeting.

As indicated previously, my husband James McRitchie, will act as my agent for the proposal, including negotiations, amendments, presentation, and any further correspondence

Sincerely,

Myra K. Young

12/16/2022
Date

Shareholder Rights Group

Legal Memorandum

TO: Members of Shareholder Rights Group

FROM: Attorneys Sanford Lewis and Brittany Blanchard Goad

DATE: December 15, 2022

RE: Presentation of multiple proposals by the same individual

---

Question Presented:

Can one person present multiple proposals at the same shareholder meeting even if they filed one of the proposals or represented one of the proponents, without violating the one proposal rule?

Brief Answer:

Yes.

When the SEC amended Rule 14a-8(c) in 2020 so as to bar a shareholder or representative from *submitting* multiple proposals for the same shareholder meeting, it explicitly did not prevent one person from *presenting* multiple proposals at the same shareholder meeting. The Commission's background statement in the release of the final 2020 rulemaking stated as follows:

> Some commenters questioned whether the amendment, which addresses the submission of proposals, would affect a representative's ability to present proposals on behalf of multiple shareholder-proponents at the same shareholders' meeting. In order for shareholder proponents who have submitted a proposal for inclusion in a company's proxy statement to remain eligible to do so at the same company within the following two years, shareholder proponents must appear at the meeting and present their proposal. However, a shareholder proponent may satisfy this requirement by employing a representative who is qualified under state law to present the proposal on the proponent's behalf. **The amendment is not intended to limit a representative's ability to present proposals on behalf of multiple shareholders at the same shareholders' meeting.** Release No. 34-89964, at page 60, emphasis added.

From: James McRitchie
To: Marina Breed
Cc: Ed DiSanto; Ruth Dowling; Michael McCormack; John Chevedden; Sanford Lewis; [redacted]
Subject: Re: (AMT) FE Proposal
Date: Tuesday, December 20, 2022 6:41:01 PM

From your response, it appears the issue is not behind us. I look forward to an eventual resolution.

James McRitchie
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
[redacted]

[redacted]

On Dec 20, 2022, at 9:05 AM, Marina Breed <Marina.Breed@americantower.com> wrote:

Dear Mr. McRitchie,

We acknowledge receipt of your letter, refer you to our prior correspondence on this matter, and reserve all rights with respect thereto.

Thank you,

Marina A. Breed (she/her/hers)
VP, Corporate Legal
American Tower Corporation
116 Huntington Avenue
Boston, MA 02116
Office: 617-585-7770
marina.breed@americantower.com

* * * * * * * * * * * * *

e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication. Thank you for your cooperation.

From: James McRitchie <[redacted]>
Sent: Friday, December 16, 2022 5:32 PM
To: Marina Breed <Marina.Breed@americantower.com>
Cc: Ed DiSanto <Ed.DiSanto@AmericanTower.com>; Ruth Dowling <ruth.dowling@AmericanTower.com>; Michael McCormack <Michael.McCormack@AmericanTower.com>; James McRitchie <[redacted]>; John Chevedden <[redacted]>; Sanford Lewis <[redacted]>; [redacted]
Subject: (AMT) FE Proposal

This Message Is From an External Sender
This message came from outside your organization.

Dear Ms. Breed,

Please read and acknowledge receipt of the attached letter regarding my wife's authority to delegate Mr. Chevedden to present her proposal. I hope we can put this issue behind us and move on to the substance of the proposal.

James McRitchie, Boston College alum &
Shareholder Advocate
Corporate Governance
http://www.corpgov.net
[redacted]
[redacted]

[redacted]

EXHIBIT C

AMENDED AND RESTATED

BY-LAWS

OF

AMERICAN TOWER CORPORATION
(a Delaware Corporation)

Effective as of February 12, 2016

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AMENDED AND RESTATED BY-LAWS
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ARTICLE I

OFFICES

SECTION 1. Registered Office. The registered office of American Tower Corporation (the "Corporation") shall be as set forth in the Certificate of Incorporation.

SECTION 2. Other Offices. The Corporation may also have offices at such other places, within or without the State of Delaware, as the Board of Directors may from time to time appoint or the business of the Corporation may require.

ARTICLE II

SEAL

The seal of the Corporation shall, subject to alteration by the Board of Directors, consist of a flat-faced circular die with the word "Delaware", together with the name of the Corporation and the year of incorporation, cut or engraved thereon.

ARTICLE III

MEETINGS OF STOCKHOLDERS

SECTION 1. Place of Meeting. Meetings of the stockholders shall be held either within or without the State of Delaware at such place, if any, as the Board of Directors may fix from time to time. The Board of Directors may, in its sole discretion, determine that meetings of stockholders shall be held solely by means of remote communications.

SECTION 2. Annual Meetings. The annual meeting of stockholders shall be held for the election of directors on such date and at such time as the Board of Directors may fix from time to time. Any other proper business may be transacted at the annual meeting.

SECTION 3. Special Meetings. Special meetings of the stockholders for any purpose or purposes may be called by the Chairman of the Board of Directors, if there be one, the President or by the directors (either by written instrument signed by a majority or by resolution adopted by a vote of the majority), and special meetings shall be called by the President or the Secretary whenever a stockholder or group of stockholders owning at least twenty-five percent (25%) in the aggregate of the capital stock issued, outstanding and entitled to vote, and who have held that amount in a net long position continuously for at least one year, so request in writing. Such request of stockholders shall state the purpose or purposes of the proposed meeting and such

purpose or purposes shall be included in the notice of meeting given by the Corporation pursuant to Section 4 of Article III.

For the purposes of this Section 3, "Net long position" shall be determined with respect to each stockholder requesting a special meeting and each beneficial owner who is directing a stockholder to act on such owner's behalf (each stockholder and owner, a "requesting party") in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended from time to time (the "Exchange Act"), provided that (x) for purposes of such definition, in determining such requesting party's "short position," the reference in Rule 14e-4 to "the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired" shall be the record date fixed to determine the stockholders entitled to deliver a written request for a special meeting, and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the Corporation's capital stock on the New York Stock Exchange (or such other securities exchange designated by the Board of Directors if the Corporation's capital stock is not listed for trading on the New York Stock Exchange) on such record date (or, if such date is not a trading day, the next succeeding trading day) and (y) the net long position of such requesting party shall be reduced by the number of shares as to which the Board of Directors determines that such requesting party does not, or will not, have the right to vote or direct the vote at the special meeting or as to which the Board of Directors determines that such requesting party has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares.

SECTION 4. Notice. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these By-Laws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

SECTION 5. Quorum and Adjournments. Except as otherwise provided by law or by the Certificate of Incorporation, the presence in person or by proxy at any meeting of stockholders of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote thereat, shall be requisite and shall constitute a quorum. So long as the Certificate of Incorporation provides for more or less than one vote for any share, or any matter, every reference in these By-Laws to a majority or other proportion of shares shall refer to such majority or other proportion of the votes of such shares. If two or more classes of stock are entitled to vote as separate classes upon any question, then, in the case of each such class, a quorum for the consideration of such question shall, except as otherwise provided by law or by

the Certificate of Incorporation, consist of a majority in interest of all stock of that class issued, outstanding and entitled to vote. If a majority of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereat or, where a larger quorum is required, such quorum, shall not be represented at any meeting of the stockholders regularly called, the holders of a majority of the shares present or represented by proxy and entitled to vote thereat shall have power to adjourn the meeting to another time, or to another time and place, without notice other than announcement of adjournment at the meeting, and there may be successive adjournments for like cause and in like manner until the requisite amount of shares entitled to vote at such meeting shall be represented; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. Subject to the requirements of law and the Certificate of Incorporation, on any issue on which two or more classes of stock are entitled to vote separately, no adjournment shall be taken with respect to any class for which a quorum is present unless the Chairman of the meeting otherwise directs. At any meeting held to consider matters which were subject to adjournment for want of a quorum at which the requisite amount of shares entitled to vote thereat shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Board of Directors may postpone, reschedule or cancel any annual or special meeting of stockholders previously scheduled by the Board of Directors, the Chairman of the Board of Directors, or by the President. The Chairman of a meeting of stockholders may adjourn or recess such meeting once convened, whether or not a quorum is present.

SECTION 6. Votes; Proxies. Except as otherwise provided in the Certificate of Incorporation, at each meeting of stockholders, every stockholder of record on the record date set by the Board of Directors for the determination of stockholders entitled to vote at such meeting, shall have one vote for each share of stock entitled to vote which is registered in such stockholder's name on the books of the Corporation.

Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware (the "DGCL") by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the Corporation. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or any interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing with the Secretary of the Corporation an instrument in writing or as otherwise permitted by law revoking the proxy or another duly executed proxy bearing a later date.

Voting at meetings of stockholders need not be by written ballot and, except as otherwise provided by law, need not be conducted by an inspector of election unless so determined by the Chairman of the meeting or by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or represented by proxy at such meeting. If it is required or determined that an inspector of election be appointed, the Chairman shall appoint one inspector of election, who shall first take and subscribe an oath or affirmation faithfully to execute the duties of an inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors so appointed shall take charge of the polls and, after the balloting, shall make a certificate of the result of the vote taken. No director or candidate for the office of director shall be appointed as such inspector.

Except as otherwise required by law, the Certificate of Incorporation, or these By-Laws, at any meeting at which a quorum is present, all action with respect to matters properly brought before such meeting taken by a majority of the votes properly cast, excluding abstentions and broker non-votes, shall be valid and binding on the Corporation; provided, however, that the Board of Directors shall be elected by a plurality of the votes properly cast if the number of candidates properly nominated for election as directors exceeds the number of directors to be elected as of the close of business on the record date for such meeting. For purposes of this Section 6 of this Article, a majority of votes shall mean that the number of votes properly cast "for" an action must exceed the number of votes properly cast "against" such action.

SECTION 7. Organization. The Chairman of the Board of Directors, if there be one, or in his or her absence the Vice Chairman, or in the absence of a Vice Chairman, the President, or in the absence of the President, a Vice President, shall call meetings of the stockholders to order and shall act as chairman thereof. The Secretary of the Corporation, if present, shall act as secretary of all meetings of stockholders, and, in his or her absence, the presiding officer may appoint a secretary.

SECTION 8. Notice of Stockholder Proposal. (a) At any meeting of stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by the Corporation pursuant to Section 4 of Article III of these By-Laws, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or a duly authorized committee thereof), or (iii) otherwise properly brought before the meeting by a stockholder of record at the time of the giving of notice as provided in this Section 8 and at the time of the meeting, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 8.

(b) For any business to be properly brought before a meeting by a stockholder (other than the nomination of a person for election as a director, which is governed exclusively by Section 10 of Article III and Section 5 of Article IV of these By-Laws), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120^{th}) day and not later than the close of business on the

ninetieth (90th) day prior to the first anniversary of the Corporation's most recent annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, to be timely, notice by the stockholder must be so delivered, or mailed and received, not earlier than the one-hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or the tenth (10th) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120th) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of such meeting or the tenth (10th) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the stockholder proposes to bring before the meeting: (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment; (ii) as to the stockholder of record giving such notice and any beneficial owner on whose behalf such proposal is made, (A) the name and address of such stockholder and beneficial owner, (B) the class and number of shares of stock of the Corporation which are, directly or indirectly, owned of record or beneficially by such stockholder and by such beneficial owner, respectively, and their respective affiliates (naming such affiliates), as of the date of such notice, (C) a description of any agreement, arrangement or understanding (including, without limitation, any swap or other derivative or short positions, profit interests, options, hedging transactions, and securities lending or borrowing arrangement) to which such stockholder or beneficial owner and their respective affiliates is, directly or indirectly, a party as of the date of such notice (x) with respect to shares of stock of the Corporation or (y) the effect or intent of which is to mitigate loss to, manage the potential risk or benefit of stock price changes (increases or decreases) for, or increase or decrease the voting power of such stockholder or beneficial owner or any of their affiliates with respect to securities of the Corporation or which may have payments based in whole or in part, directly or indirectly, on the value (or change in value) of any class or series of securities of the Corporation (any agreement, arrangement or understanding of a type described in this clause (C), a "Covered Arrangement"), and (D) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; (iii) a description of any direct or indirect material interest of the stockholder of record and of any beneficial owner on whose behalf the proposal is made, and their respective affiliates, in such business (whether by holdings of securities, by virtue of being a creditor or contractual counterparty of the Corporation or of a third party, or otherwise), and all agreements, arrangements and understandings between such stockholder and such beneficial owner and their respective affiliates, and any other person or persons (naming such person or persons) in connection with the proposal of such business by the stockholder; (iv) if the stockholder of record or any beneficial owner intends (whether by itself or as part of a group) to solicit proxies in support of such proposal, a representation to that effect; (v) any other information relating to such stockholder and beneficial owner, if any, required to be

disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; and (vi) an agreement that the stockholder of record and any related beneficial owner on whose behalf the proposal is made will notify the Corporation in writing of the information set forth in clauses (ii)(B), (ii)(C) and (iii) above as of the record date for the meeting promptly (and, in any event, within five (5) business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update and supplement such information, if necessary, so that all such information shall be true and correct as of the date that is ten (10) business days prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than seven (7) business days prior to the date of the annual meeting or any adjournment or postponement thereof. The foregoing notice requirements of this paragraph (c) of this Section 8 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(d) Notwithstanding anything in these By-Laws to the contrary, no business (other than the nomination of a person for election as a director, which is governed exclusively by Section 10 of Article III and Section 5 of Article IV of these By-Laws, and matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting) shall be conducted at any meeting of stockholders except in accordance with the procedures set forth in this Section 8 of Article III. The Chairman of the meeting shall, if the facts warrant, determine and declare that business was not properly brought before the meeting in accordance with the provisions of this Section 8 of Article III, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(e) For purposes of this Section 8 of Article III, Section 10 of Article III and Section 5 of Article IV of these By-Laws, public disclosure shall be deemed to include a disclosure made in a press release reported by the Dow Jones News Services, Associated Press or a comparable national news service or in a document filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

SECTION 9. Consent of Stockholders in Lieu of Meeting. (a) Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCL to be taken at any annual or special meeting of the stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings

of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request that the Board of Directors fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such written notice is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Section 9(b)). If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 9(b) or otherwise within ten (10) days after the date on which such written notice is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date after the expiration of such ten (10) day time period on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to any officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors pursuant to the first sentence of this Section 9(b), the record date for determining stockholders entitled to consent to corporate action in writing without a meeting if prior action by the Board of Directors is required by applicable law shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

(c) In the event of the delivery, in the manner provided by this Section 9 and applicable law, to the Corporation of written consent or consents to take corporate action and/or any related revocation or revocations, the Corporation shall engage independent inspectors of elections for the purpose of performing promptly a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent and without a meeting shall be effective until such inspectors have completed their review, determined that the requisite number of valid and unrevoked consents delivered to the Corporation in accordance with this Section 9 and applicable law have been obtained to authorize or take the action specified in the consents, and certified such determination for entry in the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders. Nothing contained in this Section 9(c) shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(d) Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein

unless, within sixty (60) days after the earliest dated written consent received in accordance with this Section 9, a valid written consent or valid written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation in the manner prescribed in this Section 9 and applicable law, and not revoked.

(e) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall, to the extent required by law, be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation. In the event that the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL other than Section 228 thereof, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such other section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL, and that written notice has been given as provided in such Section 228.

SECTION 10. Proxy Access.

(a) Inclusion of Nominee in Proxy Materials. Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of stockholders (following the 2016 annual meeting), subject to the provisions of this Section 10, the Corporation shall include in its proxy materials for such annual meeting, in addition to any persons nominated for election by the Board of Directors or a committee appointed by the Board of Directors, the name, together with the Required Information (as defined below), of any person nominated for election (a "Stockholder Nominee") to the Board of Directors by a stockholder, or by a group of no more than twenty (20) stockholders, that has satisfied (individually or, in the case of a group, collectively) all applicable conditions and has complied with all applicable procedures set forth in this Section 10 (an "Eligible Stockholder," which shall include an eligible stockholder group), and that expressly elects at the time of providing the notice required by this Section 10 (the "Nomination Notice") to have its nominee included in the Corporation's proxy materials for such annual meeting pursuant to this Section 10.

(b) Required Information. For purposes of this Section 10, the "Required Information" that the Corporation will include in its proxy materials is (i) the information concerning the Stockholder Nominee(s) and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the rules and regulations of the Securities and Exchange Commission promulgated under the Exchange Act; and (ii) if the Eligible Stockholder so elects, a Supporting Statement (as defined below).

(c) Delivery of Nomination Notice. To be timely, a stockholder's Nomination Notice must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the one-hundred fiftieth (150th) day and not later than the close of business on the one-hundred twentieth (120^{th}) day prior to the first anniversary of the release date of the Corporation's proxy materials for its most recent annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is more than thirty (30) days before or more than seventy (70) days after the first

anniversary of the preceding year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Nomination Notice must be so delivered, or mailed and received, not later than the close of business on the later of the one-hundred twentieth (120th) day prior to the date of such annual meeting or the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a Nomination Notice as described above.

(d) Maximum Number of Stockholder Nominees.

(i) The maximum aggregate number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation's proxy materials with respect to an annual meeting of stockholders shall not exceed twenty-five percent (25%) of the number of directors in office as of the last day on which a Nomination Notice may be delivered pursuant to this Section 10, or if such amount is not a whole number, the closest whole number below twenty-five percent (25%); provided, however, that this number shall be reduced by (1) any Stockholder Nominee whose name was submitted by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 10 but either is subsequently withdrawn or that the Board of Directors decides to nominate for election and (2) the number of incumbent directors who were Stockholder Nominees at any of the preceding two annual meetings (including any individual covered under clause (1) above) and whose election at the upcoming annual meeting is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in Section 10(c) above but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board in connection therewith, the maximum number shall be calculated based on the number of directors in office as so reduced.

(ii) Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 10 shall rank such Stockholder Nominees based on the order in which the Eligible Stockholder desires such Stockholder Nominees be selected for inclusion in the Corporation's proxy materials. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 10 exceeds the maximum number of nominees provided for pursuant to subsection (d)(i) above, the highest ranking Stockholder Nominee who meets the requirements of this Section 10 of each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order by the number (largest to smallest) of shares of common stock of the Corporation each Eligible Stockholder disclosed as Owned (as defined below) in its respective Nomination Notice submitted to the Corporation pursuant to this Section 10. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 10 of each Eligible Stockholder has been selected, this process will continue with the next

highest ranked nominees as many times as necessary, following the same order each time, until the maximum number is reached.

(e) Ownership. For purposes of this Section 10 only, an Eligible Stockholder shall be deemed to "Own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (y) borrowed by such stockholder or any of its affiliates for any purpose, or purchased by such stockholder or any of its affiliates subject to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "Own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's Ownership of shares shall be deemed to continue during any period in which (i) the person has loaned such shares, provided that the person has the power to recall such loaned shares on no longer than five (5) business days' notice and includes with the Nomination Notice an agreement that it (A) will promptly recall such loaned shares upon being notified by the Corporation that any of its Stockholder Nominees will be included in the Corporation's proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting; or (ii) the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. The terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings. Whether outstanding shares of common stock of the Corporation are "Owned" for purposes of this Section 10 shall be determined by the Board of Directors or any committee thereof, which determination shall be conclusive and binding on the Corporation and its stockholders. For purposes of this Section 10, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Securities and Exchange Commission promulgated under the Exchange Act.

(f) Eligible Stockholder. In order to make a nomination pursuant to this Section 10, an Eligible Stockholder or group of up to twenty (20) Eligible Stockholders must have Owned (as defined above) continuously for at least three (3) years at least the number of shares of common stock of the Corporation that shall constitute three percent (3%) or more of the voting power of the outstanding common stock of the Corporation (the "Required Shares") as of (i) the date on which the Nomination Notice is delivered to, or mailed to and received by, the Secretary of the Corporation in accordance with this Section 10, (ii) the record date for determining stockholders entitled to vote at the annual meeting, and (iii) the date of the annual meeting. For purposes of this Section 10, two or more funds or trusts that are (A) under common management

and investment control, (B) under common management and funded primarily by the same employer, or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended (each, a "Qualifying Fund"), shall be treated as one stockholder or beneficial owner.

No person may be a member of more than one group of persons constituting an Eligible Stockholder under this Section 10. If a group of stockholders aggregates Ownership of shares in order to meet the requirements under this Section 10, (x) all shares held by each stockholder constituting their contribution to the foregoing three percent (3%) threshold must have been held by that stockholder continuously for at least three (3) years and through the date of the annual meeting, and evidence of such continuous Ownership shall be provided as specified in subsection 10(g) below, (y) each provision in this Section 10 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each stockholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their shareholdings in order to meet the three percent (3%) Ownership requirement of the "Required Shares" definition), and (z) a breach of any obligation, agreement or representation under this Section 10 by any member of such group shall be deemed a breach by the Eligible Stockholder.

(g) Information to be Provided by Eligible Stockholder. Within the time period specified in this Section 10 for providing the Nomination Notice, an Eligible Stockholder making a nomination pursuant to this Section 10 must provide the following information in writing to the Secretary of the Corporation at the principal executive offices of the Corporation:

(i) one or more written statements from the Eligible Stockholder (and from each other record holder of the shares and intermediary through which the shares are or have been held during the requisite three (3)-year holding period) specifying the number of shares of common stock of the Corporation that the Eligible Stockholder Owns, and has continuously Owned for three (3) years preceding the date of the Nomination Notice, and the Eligible Stockholder's agreement to provide, within five (5) business days after the later of the record date for the annual meeting and the date on which the record date is first publicly disclosed by the Corporation, written statements from the Eligible Stockholder, the record holder and intermediaries verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the record date, provided that statements meeting the requirements of Schedule 14N will be deemed to fulfill this requirement;

(ii) the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected, together with the information and representations that would be required to be set forth in a stockholder's notice of a nomination pursuant to Section 5 of Article IV;

(iii) a representation and undertaking (1) that the Eligible Stockholder (A) did not acquire, and is not holding, securities of the Corporation for the purpose or with

the effect of influencing or changing control of the Corporation; (B) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated by it pursuant to this Section 10, (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (D) has not and will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation, and (E) will Own the Required Shares through the date of the annual meeting of stockholders; (2) that the facts, statements and other information in all communications with the Corporation and its stockholders are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) as to whether or not the Eligible Stockholder intends to maintain qualifying Ownership of the Required Shares for at least one year following the annual meeting;

(iv) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of all such members with respect to the nomination and all matters related thereto, including any withdrawal of the nomination, and the acceptance by such group member of such designation;

(v) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination, solicitation or other activity by the Eligible Stockholder in connection with its efforts to elect the Stockholder Nominee(s) pursuant to this Section 10, and (C) comply with all other laws, rules and regulations applicable to any actions taken pursuant to this Section 10, including the nomination and any solicitation in connection with the annual meeting of stockholders; and

(vi) in the case of a Qualifying Fund whose share Ownership is counted for purposes of qualifying as an Eligible Stockholder, documentation from the Qualifying Fund reasonably satisfactory to the Board of Directors that demonstrates that it meets the requirements of a Qualifying Fund set forth in Section 10(f) above.

(h) Supporting Statement. The Eligible Stockholder may provide to the Secretary of the Corporation, at the time the information required by this Section 10 is provided, a written statement for inclusion in the Corporation's proxy statement for the annual meeting of stockholders, not to exceed five hundred (500) words, in support of the Stockholder Nominee(s)' candidacy (the "Supporting Statement"). Notwithstanding anything in this Section 10 to the contrary, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes (i) is not true in all material respects or omits a material statement necessary to make such information or Supporting Statement (or portion thereof) not misleading; (ii) directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (iii) violates any applicable law, rule, regulation or listing standard. Nothing in this Section 10 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(i) Representations and Agreement of the Stockholder Nominee. Within the time period specified in this Section 10 for delivering the Nomination Notice, a Stockholder Nominee must deliver to the Secretary of the Corporation a written representation and agreement, in the form prescribed by the Board of Directors, that the Stockholder Nominee (i) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a Stockholder Nominee or director other than as has been disclosed to the Corporation, and if elected as a director of the Corporation, will not agree or accept any increase in the amount or scope, as applicable, of any such compensation, reimbursement or indemnification, and (iii) would be in compliance, if elected as a director of the Corporation, and will comply with applicable law and the Corporation's Corporate Governance Guidelines and other policies applicable to directors generally. At the request of the Corporation, the Stockholder Nominee must promptly, but in any event within five (5) business days of such request, submit all completed and signed questionnaires required of the Corporation's directors and officers. The Corporation may request such additional information (x) as may be reasonably necessary to permit the Board of Directors or any committee thereof to determine if each Stockholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the Corporation's common stock is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (the "Applicable Independence Standards") and otherwise to determine the eligibility of each Stockholder Nominee to serve as a director of the Corporation, or (y) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of each Stockholder Nominee.

(j) True, Correct and Complete Information. In the event that any information or communications provided by any Eligible Stockholder or Stockholder Nominee to the Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the

statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any such defect or limit the Corporation's right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 10. In addition, any person providing any information to the Corporation pursuant to this Section 10 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for the annual meeting and as of the date that is ten (10) business days prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the later of the record date for the annual meeting and the date on which the record date is first publicly disclosed by the Corporation (in the case of any update and supplement required to be made as of the record date), and not later than seven (7) business days prior to the date of the annual meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of ten (10) business days prior to the annual meeting).

(k) Limitation on Stockholder Nominees. Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at such annual meeting, or (ii) does not receive at least twenty percent (20%) of the votes cast "for" the Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 10 for the next two (2) annual meetings of stockholders. Any Eligible Stockholder (including each stockholder, each Qualifying Fund comprising one stockholder or person under Section 10(f), and/or each beneficial owner whose stock ownership is counted as part of a group for the purposes of qualifying as an Eligible Stockholder) whose Stockholder Nominee is elected as a director at the annual meeting of stockholders will not be eligible to nominate or participate in the nomination of a Stockholder Nominee for the following three (3) annual meetings of stockholders other than the nomination of such previously nominated and elected Stockholder Nominee.

(l) Exceptions. Notwithstanding anything in this Section 10 to the contrary, the Corporation shall not be required to include, pursuant to this Section 10, any Stockholder Nominee in its proxy materials for any meeting of stockholders (i) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (ii) if the Corporation receives notice pursuant to Section 5 of Article IV that any stockholder intends to nominate any nominee for election to the Board of Directors at such meeting, (iii) who is not independent under the Applicable Independence Standards, as determined by the Board of Directors or any committee thereof, (iv) whose nomination or election as a member of the Board of Directors would cause the Corporation to be in violation of these By-Laws, the Certificate of Incorporation, the rules and listing standards of the principal exchanges upon which the

Corporation's shares of common stock are listed or traded, or any applicable law, rule or regulation, (v) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vi) if such Stockholder Nominee (or any associate of such Stockholder Nominee) is a party to or has an economic interest in the outcome of any ongoing litigation, claim, action, suit, arbitration or other proceeding or investigation adverse to the Corporation, (vii) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (viii) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, (ix) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the Corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board of Directors, (x) if such Stockholder Nominee or the applicable Eligible Stockholder otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder or fails to comply with its obligations pursuant to this Section 10, or (xi) if the applicable Eligible Stockholder ceases to be an Eligible Stockholder for any reason, including but not limited to not Owning the Required Shares through the date of the applicable annual meeting of stockholders.

(m) Disqualifications. Notwithstanding anything in this Section 10 to the contrary, if (i) a Stockholder Nominee is determined not to satisfy the eligibility requirements of this Section 10 or any other provision of the Corporation's By-Laws, Certificate of Incorporation, Corporate Governance Guidelines or other applicable regulation at any time before the annual meeting (whether or not already included in the Corporation's proxy materials for the annual meeting), (ii) a Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached any of its obligations, agreements or representations or fails to comply with its obligations under this Section 10, (iii) the applicable Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting of stockholders to present any nomination pursuant to this Section 10, (iv) a Stockholder Nominee dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, or (v) the applicable Eligible Stockholder otherwise ceases to be an Eligible Stockholder for any reason, including but not limited to not Owning the Required Shares through the date of the applicable annual meeting of stockholders, in each of clauses (i) through (v) as determined by the Board of Directors, any committee thereof or the person presiding at the annual meeting, (x) the Corporation may omit or, to the extent feasible, remove the information concerning such Stockholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting, (y) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder and (z) the Board of Directors or the person presiding at the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(n) Filing Obligation. The Eligible Stockholder (including any person who Owns shares of common stock of the Corporation that constitute part of the Eligible Stockholder's Ownership for purposes of satisfying Section 10(e) hereof) shall file with the Securities and

Exchange Commission any solicitation or other communication with the Corporation's stockholders relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act.

ARTICLE IV

DIRECTORS

SECTION 1. Number. The business and affairs of the Corporation shall be conducted and managed by a Board of Directors consisting of not less than one director, none of whom needs to be a stockholder. The number of directors shall be fixed at each annual meeting of stockholders, but if the number is not so fixed, the number shall remain as it stood immediately prior to such meeting. At each annual meeting of stockholders, the stockholders shall elect directors.

At any time during any year, except as otherwise provided by law, the Certificate of Incorporation, or these By-Laws, the number of directors may be increased or reduced, in each case by vote of a majority of the stock issued and outstanding and present in person or represented by proxy and entitled to vote for the election of directors or by resolution of the directors. No reduction in the number of directors shall shorten the term of any director.

SECTION 2. Term of Office. Each director shall hold office until the next annual meeting of stockholders and until his or her successor is duly elected and qualified or until his or her earlier death or resignation, subject to the right of the stockholders at any time to remove any director or directors as provided in Section 4 of this Article IV.

SECTION 3. Vacancies. If any vacancy shall occur among the directors, or if the number of directors shall at any time be increased, the directors then in office, although less than a quorum, by a majority vote may fill the vacancies or newly-created directorships, or any such vacancies or newly-created directorships may be filled by the stockholders at any meeting.

SECTION 4. Removal by Stockholders. Except as otherwise provided by law, the Certificate of Incorporation or otherwise, the holders of record of the capital stock of the Corporation entitled to vote for the election of directors may, by the affirmative vote of a majority of the outstanding shares entitled to vote thereon, remove any director or directors, with or without cause, and, in their discretion, elect a new director or directors in place thereof.

SECTION 5. Procedure for Nominations by Stockholders. (a) Any stockholder of record as of the time of the giving of notice as provided in this Section 5 and at the time of the meeting, who is entitled to vote for the election of a director at any meeting of stockholders, may nominate one or more persons for such election only if such stockholder complies with the notice procedures set forth in this Section 5. In the case of a special meeting of stockholders at which the Board of Directors gives notice that directors are to be elected, a stockholder may nominate one or more persons for election only as provided in this Section 5 and only for such position(s) as are specified in the Corporation's notice of meeting as being up for election at such meeting.

(b) To nominate a person for election as a director, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120^{th}) day and not later than the close of business on the ninetieth (90^{th}) day prior to the first anniversary of the Corporation's most recent annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, to be timely, notice by the stockholder must be so delivered, or mailed and received, not earlier than the one-hundred twentieth (120^{th}) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to the date of such annual meeting or the tenth (10^{th}) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120^{th}) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to the date of such meeting or the tenth (10^{th}) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary of the Corporation shall set forth: (i) as to the stockholder of record giving such notice and any beneficial owner on whose behalf the nomination is made, (A) the name and address of such stockholder and beneficial owner, (B) the class and number of shares of stock of the Corporation which are, directly or indirectly, owned of record or beneficially by such stockholder and by such beneficial owner, respectively, and their respective affiliates (naming such affiliates), as of the date of such notice, (C) a description of any Covered Arrangement to which such stockholder or beneficial owner, and their respective affiliates is, directly or indirectly, a party as of the date of such notice, (D) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; and (E) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with a solicitation of proxies for the election of directors pursuant to and in accordance with Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (ii) a description of all arrangements or understandings between the stockholder or beneficial owner, and their respective affiliates, and each nominee or any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (iii) if the stockholder or any related beneficial owner intends (whether by itself or as part of a group) to solicit proxies in support of such nomination, a representation to that effect; (iv) as to each person the stockholder of record proposes to nominate for election or reelection as a director, (A) a description of any Covered Arrangement to which such nominee or any of his or her affiliates is a party as of the date of such notice, (B) the written consent of such nominee to being named in the proxy statement as a nominee and to serving as a director if so elected, and (C) a statement tendering, promptly following the stockholder meeting at which such nominee is elected or re-elected as director, an irrevocable resignation that will be effective upon (a) the failure to receive the required vote at

the next stockholder meeting at which he or she faces re-election and (b) Board acceptance of such resignation, and (D) all other information relating to such nominee as would have been required to be included in a proxy statement filed in connection with a solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (v) a copy of the Schedule 14N that has been or is concurrently being filed by such stockholder with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act, as such rule may be amended; (vi) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of Schedule 14N; and (vii) an agreement that the stockholder of record and any related beneficial owner will notify the Corporation in writing of the information set forth in clauses (i)(B), (i)(C), (ii), (iv), (v) and (vi) above as of the record date for the meeting promptly (and, in any event, within five (5) business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update and supplement such information, if necessary, so that all such information shall be true and correct as of the date that is ten (10) business days prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than seven (7) business days prior to the date of the annual meeting or any adjournment or postponement thereof. The foregoing notice requirements of this paragraph (c) of this Section 5 shall be deemed satisfied by a stockholder with respect to a nomination if the stockholder has notified the Corporation of his, her or its intention to present the nomination at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(d) Notwithstanding anything in these By-Laws to the contrary, if the Chairman determines that a nomination of any candidate for election as a director was not made in accordance with the procedures set forth in this Section 5, such nomination shall be void.

(e) Notwithstanding the foregoing provisions of this Section 5, any stockholder intending to make a nomination at a meeting in accordance with this Section 5, and any related beneficial owner, shall also comply with all applicable requirements of the Exchange Act, and the rules and regulations thereunder with respect to the matters set forth in these By-Laws; provided, however, that any references in these By-Laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations made or intended to be made in accordance with this Section 5. Nothing in this Section 5 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

(f) To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver (not later than the deadline prescribed for delivery of notice under this Section 5) to the Secretary of the Corporation a written questionnaire, in the form prescribed by the Board of Directors, with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement, in the form prescribed by the Board of Directors, that such

person (i) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein; and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director, and will comply with, applicable law and the Corporation's Corporate Governance Guidelines and other policies applicable to directors generally. The foregoing questionnaire and written agreement shall be provided by the Secretary upon written request. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

SECTION 6. Meetings. Meetings of the Board of Directors shall be held at such place, within or without the State of Delaware, as may from time to time be fixed by resolution of the Board of Directors or by the Chairman of the Board, if there be one, or by the President, and as may be specified in the notice or waiver of notice of any meeting. Meetings may be held at any time upon the call of the Chairman of the Board, if there be one, or the President or any two (2) of the directors in office by oral, telecopy or other form of electronic transmission, or written notice, duly served or sent to each director not less than twenty-four (24) hours before such meeting, except that, if mailed, not less than seventy two (72) hours before such meeting.

Meetings may be held at any time and place without notice if all the directors are present and do not object to the holding of such meeting for lack of proper notice or if those not present shall, in writing or by telecopy or other form of electronic transmission, waive notice thereof. A regular meeting of the Board may be held without notice immediately following the annual meeting of stockholders at the place where such meeting is held. Regular meetings of the Board may also be held without notice at such time and place as shall from time to time be determined by resolution of the Board. Except as otherwise provided by law, the Certificate of Incorporation or otherwise, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors or any committee thereof need be specified in any written waiver of notice.

Members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to the foregoing provisions shall constitute presence in person at the meeting.

SECTION 7. Votes. Except as otherwise provided by law, the Certificate of Incorporation or otherwise in these By-Laws, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

SECTION 8. Quorum and Adjournment. Except as otherwise provided by law, the Certificate of Incorporation or otherwise in these By-Laws, a majority of the directors shall

constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than announcement of the adjournment at the meeting, and at such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally noticed.

SECTION 9. Compensation. Directors shall receive compensation for their services, as such, and for service on any Committee of the Board of Directors, as fixed by resolution of the Board of Directors and for expenses of attendance at each regular or special meeting of the Board or any Committee thereof. Nothing in this Section 9 shall be construed to preclude a director from serving the Corporation in any other capacity and receiving compensation therefor.

SECTION 10. Action By Consent of Directors. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (which may be in counterparts) or by electronic transmission, and the writing, writings, or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such consent shall be treated as a vote adopted at a meeting for all purposes.

ARTICLE V

COMMITTEES OF DIRECTORS

SECTION 1. Executive Committee. The Board of Directors may by resolution appoint an Executive Committee of one (1) or more members, to serve during the pleasure of the Board of the Directors, to consist of such directors as the Board of the Directors may from time to time designate. The Board of Directors shall designate the Chairman of the Executive Committee.

(a) Procedure. The Executive Committee shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) Responsibilities. During the intervals between the meetings of the Board of Directors, except as otherwise provided by the Board of Directors in establishing such Committee or otherwise, the Executive Committee shall possess and may exercise all the powers of the Board of the Directors in the management and direction of the business and affairs of the Corporation; provided, however, that the Executive Committee shall not, except to the extent the Certificate of Incorporation or the resolution providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the DGCL, have the power:

(i) to amend or authorize the amendment of the Certificate of Incorporation or these By-Laws;

(ii) to authorize the issuance of stock in excess of one million (1,000,000) shares in any single transaction or group of related transactions;

(iii) to adopt an agreement of merger or consolidation pursuant to which the Corporation will merge or consolidate or to recommend to the stockholders the sale, lease or exchange of all or substantially all the property and business of the Corporation;

(iv) to recommend to the stockholders a dissolution, or a revocation of a dissolution, of the Corporation; or

(v) to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.

(c) Reports. The Executive Committee shall keep regular minutes of its proceedings, and all action by the Executive Committee shall be reported promptly to the Board of Directors. Such action shall be subject to review, amendment and repeal by the Board of the Directors, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of the Executive Committee, who may replace any absent or disqualified member at any meeting of the Executive Committee. In the absence or disqualification of any member of the Executive Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 2. Audit Committee. The Board of Directors may by resolution appoint an Audit Committee of one (1) or more members who shall not be officers or employees of the Corporation to serve during the pleasure of the Board of the Directors. The Board of Directors shall designate the Chairman of the Audit Committee.

(a) Procedure. The Audit Committee, by a vote of a majority of its members, shall fix its own times and places of meeting, shall determine the number of its members constituting a quorum for the transaction of business, and shall prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) Responsibilities. The Audit Committee shall review the annual financial statements of the Corporation prior to their submission to the Board of Directors, shall consult with the Corporation's independent auditors, and may examine and consider such other matters in relation to the internal and external audit of the Corporation's accounts and in relation to the financial affairs of the Corporation and its accounts, including the selection and retention of independent auditors, as the Audit Committee may, in its discretion, determine to be desirable.

(c) Reports. The Audit Committee shall keep regular minutes of its proceedings, and all action by the Audit Committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of the Audit Committee, who may replace any absent or disqualified member at any meeting of the Audit Committee. In the absence or disqualification of any member of the Audit Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 3. Other Committees. The Board of Directors may by resolution appoint one or more other committees from and outside of its own number. Every such committee must include at least one (1) member of the Board of Directors. The Board may from time to time designate or alter, within the limits permitted by law, the Certificate of Incorporation and this Section 3, if applicable, the duties, powers and number of members of such other committees or change their membership, and may at any time abolish such other committees or any of them; provided, however, that the Board of Directors shall not delegate to any committee which includes non-director members any powers which, by law, must be exercised by the Board of Directors.

(a) Procedure. Each committee, appointed pursuant to this Section 3, shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.

(b) Responsibilities. Each committee, appointed pursuant to this Section 3, shall exercise the powers assigned to it by the Board of Directors in its discretion.

(c) Reports. Each committee appointed pursuant to this Section 3 shall keep regular minutes of proceedings, and all action by each such committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.

(d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of each committee, appointed pursuant to this Section 3, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors (or, to the extent permitted, another person) to act at the meeting in place of any such absent or disqualified member.

SECTION 4. Term of Office. Each member of a committee shall hold office until the first meeting of the Board of Directors following the annual meeting of stockholders (or until such other time as the Board of Directors may determine, either in the vote establishing the committee or at the election of such member or otherwise) and until his or her successor is elected and qualified, or until he or she sooner dies, resigns, is removed, is replaced by change of membership or becomes disqualified by ceasing to be a director (where membership on the

Board of Directors is required), or until the committee is sooner abolished by the Board of Directors.

ARTICLE VI

OFFICERS

SECTION 1. Officers. The Board of Directors shall elect a President, a Secretary and a Treasurer, and, in their discretion, may elect a Chairman of the Board, a Vice Chairman of the Board, a Controller, and one or more Executive Vice Presidents, Vice Presidents, Assistant Secretaries, Assistant Treasurers and Assistant Controllers as deemed necessary or appropriate. Such officers shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders (or at such other meeting as the Board of Directors determines), and each shall hold office for the term provided by the vote of the Board of Directors, except that each will be subject to removal from office in the discretion of the Board of Directors as provided herein. The powers and duties of more than one office may be exercised and performed by the same person.

SECTION 2. Vacancies. Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors, at any regular or special meeting.

SECTION 3. Chairman of the Board. The Chairman of the Board of Directors, if elected, shall be a member of the Board of Directors and shall preside at its meetings. The Chairman, if other than the President, shall advise and counsel with the President, and shall perform such duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 4. President. Unless the Board of Directors has designated another person as the Corporation's chief executive officer, the President shall be the chief executive officer of the Corporation. Subject to the directions of the Board of Directors, the President shall have and exercise direct charge of and general supervision over the business and affairs of the Corporation and shall perform all duties incident to the office of the chief executive officer of a corporation and such other duties as from time to time may be assigned to him or her by the Board of Directors. The President may but need not be a member of the Board of Directors.

SECTION 5. Executive Vice Presidents and Vice Presidents. Each Executive Vice President and Vice President shall have and exercise such powers and shall perform such duties as from time to time may be assigned to him or to her by the Board of Directors or the President.

SECTION 6. Secretary. The Secretary shall keep the minutes of all meetings of the stockholders and of the Board of Directors in books provided for the purpose; shall see that all notices are duly given in accordance with the provisions of law and these By-Laws; the Secretary shall be custodian of the records and of the corporate seal or seals of the Corporation; shall see that the corporate seal is affixed to all documents the execution of which, on behalf of the Corporation under its seal, is duly authorized, and, when the seal is so affixed, he or she may attest the same; the Secretary may sign, with the President, an Executive Vice President or a Vice President, certificates of stock of the Corporation; and, in general, the Secretary shall perform all duties incident to the office of secretary of a corporation, and such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 7. Assistant Secretaries. The Assistant Secretaries in order of their seniority shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Secretary.

SECTION 8. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit, or cause to be deposited, in the name of the Corporation, all monies or other valuable effects in such banks, trust companies or other depositaries as shall, from time to time, be selected by the Board of Directors; may endorse for collection on behalf of the Corporation checks, notes and other obligations; may sign receipts and vouchers for payments made to the Corporation; may sign checks of the Corporation, singly or jointly with another person as the Board of Directors may authorize, and pay out and dispose of the proceeds under the direction of the Board of Directors; the Treasurer shall render to the President and to the Board of Directors, whenever requested, an account of the financial condition of the Corporation; the Treasurer may sign, with the President, or an Executive Vice President or a Vice President, certificates of stock of the Corporation; and in general, shall perform all the duties incident to the office of treasurer of a corporation, and such other duties as from time to time may be assigned by the Board of Directors. Unless the Board of Directors shall otherwise determine, the Treasurer shall be the chief financial officer of the Corporation.

SECTION 9. Assistant Treasurers. The Assistant Treasurers in order of their seniority shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Treasurer.

SECTION 10. Controller. The Controller, if elected, shall be the chief accounting officer of the Corporation and shall perform all duties incident to the office of a controller of a corporation, and, in the absence of or disability of the Treasurer or any Assistant Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the President or the Treasurer.

SECTION 11. Assistant Controllers. The Assistant Controllers in order of their seniority shall, in the absence or disability of the Controller, perform the duties and exercise the powers of the Controller and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the Controller.

SECTION 12. Subordinate Officers. The Board of Directors may appoint such subordinate officers as it may deem desirable. Each such officer shall hold office for such period, have such authority and perform such duties as the Board of Directors may prescribe. The Board of Directors may, from time to time, authorize any officer to appoint and remove subordinate officers and to prescribe the powers and duties thereof.

SECTION 13. Compensation. The Board of Directors shall fix the compensation of all officers of the Corporation. It may authorize any officer, upon whom the power of appointing

subordinate officers may have been conferred, to fix the compensation of such subordinate officers.

SECTION 14. Removal. Any officer of the Corporation may be removed, with or without cause, by action of the Board of Directors.

SECTION 15. Bonds. The Board of Directors may require any officer of the Corporation to give a bond to the Corporation, conditional upon the faithful performance of his or her duties, with one or more sureties and in such amount as may be satisfactory to the Board of Directors.

ARTICLE VII

CERTIFICATES OF STOCK

SECTION 1. Form and Execution of Certificates. The interest of each stockholder of the Corporation shall be evidenced by a certificate or certificates for shares of stock in such form as the Board of Directors may from time to time prescribe. The certificates of stock of each class shall be consecutively numbered and signed by the Chairman or Vice Chairman of the Board, if any, the President, an Executive Vice President or a Vice President and by the Secretary, an Assistant Secretary, the Treasurer or an Assistant Treasurer of the Corporation, and may be countersigned and registered in such manner as the Board of Directors may by resolution prescribe, and shall bear the corporate seal or a printed or engraved facsimile thereof. Where any such certificate is signed by a transfer agent or transfer clerk acting on behalf of the Corporation, the signatures of any such Chairman, Vice Chairman, President, Executive Vice President, Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary may be facsimiles, engraved or printed. In case any officer or officers, who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates, shall cease to be such officer or officers, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered by the Corporation as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers.

In case the corporate seal which has been affixed to, impressed on, or reproduced in any such certificate or certificates shall cease to be the seal of the Corporation before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered by the Corporation as though the seal affixed thereto, impressed thereon or reproduced therein had not ceased to be the seal of the Corporation.

Every certificate for shares of stock which are subject to any restriction on transfer pursuant to law, the Certificate of Incorporation, these By-Laws, or any agreement to which the Corporation is a party, shall have the restriction noted conspicuously on the certificate, and shall also set forth, on the face or back, either the full text of the restriction or a statement of the existence of such restriction and (except if such restriction is imposed by law) a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge.

Every certificate issued when the Corporation is authorized to issue more than one class or series of stock shall set forth on its face or back either the full text of the preferences, voting powers, qualifications, and special and relative rights of the shares of each class and series authorized to be issued, or a statement of the existence of such preferences, powers, qualifications and rights, and a statement that the Corporation will furnish a copy thereof to the holder of such certificate upon written request and without charge.

SECTION 2. Transfer of Shares. The shares of the stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his or her attorney lawfully constituted, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof or guaranty of the authenticity of the signature as the Corporation or its agents may reasonably require. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, save as expressly provided by law or by the Certificate of Incorporation. It shall be the duty of each stockholder to notify the Corporation of his or her post office address.

SECTION 3. Fixing Date for Determination of Stockholders of Record (Other than For Written Consents).

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for

determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 4. Lost or Destroyed Certificates. The Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 5. Uncertificated Shares. The Board of Directors of the Corporation may by resolution provide that one or more of any or all classes or series of the stock of the Corporation shall be uncertificated shares, subject to the provisions of Section 158 of the DGCL.

ARTICLE VIII

EXECUTION OF DOCUMENTS

SECTION 1. Execution of Checks, Notes, etc. All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers, or agent or agents, as shall be thereunto authorized from time to time by the Board of Directors, which may in its discretion authorize any such signatures to be facsimile.

SECTION 2. Execution of Contracts, Assignments, etc. Unless the Board of Directors shall have otherwise provided generally or in a specific instance, all contracts, agreements, endorsements, assignments, transfers, stock powers, or other instruments shall be signed by the President, any Executive Vice President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer. The Board of Directors may, however, in its discretion, require any or all such instruments to be signed by any two or more of such officers, or may permit any or all of such instruments to be signed by such other officer or officers, agent or agents, as it shall be thereunto authorize from time to time.

SECTION 3. Execution of Proxies. The President, any Executive Vice President or any Vice President, and the Secretary, the Treasurer, any Assistant Secretary or any Assistant Treasurer, or any other officer designated by the Board of Directors, may sign on behalf of the Corporation proxies to vote upon shares of stock of other companies or other equity interests of other entities standing in the name of the Corporation.

ARTICLE IX

INSPECTION OF BOOKS

The Board of Directors shall determine from time to time whether, and if allowed, to what extent and at what time and places and under what conditions and regulations, the accounts and books of the Corporation (except such as may by law be specifically open to inspection) or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the

laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

ARTICLE X

FISCAL YEAR

The fiscal year of the Corporation shall end on December 31 of each year or such other date as determined from time to time by vote of the Board of Directors.

ARTICLE XI

AMENDMENTS

The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time maybe adopted, only by the majority of the entire Board of Directors or with the approval or consent of the holders of not less than a majority, determined in accordance with the provisions of the second paragraph of Section A of Article FOURTH of the Certificate of Incorporation, of the total number of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors.

EXHIBIT D

JOHN CHEVEDDEN

[redacted] [redacted]

Mr. Edmund DiSanto
Corporate Secretary
American Tower Corporation (AMT)
116 Huntington Ave
11th Floor
Boston MA 02116
PH: 617 375-7500

Dear Mr. DiSanto,

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 next annual shareholder meeting.

I intend to continue to hold through the date of the Company's 2023 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from formally requesting a broker letter from me.

Sincerely,

John Chevedden

October 21, 2022
Date

cc: Mneesha Nahata <Mneesha.Nahata@AmericanTower.com>
Leah C. Stearns <ir@americantower.com>

Proposal 4 – Report Greenhouse Gas Reduction Goals

Whereas: The Intergovernmental Panel on Climate Change has advised that greenhouse gas (GHG) emissions must be halved by 2030 and reach net zero by 2050 in order to limit global warming to 1.5 degrees Celsius and avoid the worst impacts of climate change. Every incremental increase in temperature above 1.5 degrees will entail increasingly severe physical, transition, and systemic risks for companies and investors alike.

As American Tower Corporation ("American Tower" or "the Company") noted in its 2022 10-K, climate change is increasing the frequency and severity of natural disasters, which may disrupt the operations of the Company's towers, fiber networks, data centers, and computer systems. American Tower also operates in numerous countries and U.S. states where climate regulations are in effect or under consideration, and the Company's recent acquisitions of energy-intensive data centers make long-term preparations to comply with such regulation critical.

American Tower's climate risk mitigation strategy falls short of investor expectations. Although the Company has set a near-term GHG target, it is not aligned with limiting warming to 1.5 degrees Celsius. American Tower also has not set a long-term science-based GHG target inclusive of its Scope 1, 2, and 3 emissions. By contrast, competitor Cellnex Telecom has a near-term 1.5 degree-aligned target approved by the Science Based Targets initiative (SBTi) and has committed to achieve climate neutrality by 2050.[1]

American Tower must take additional action to comprehensively address its climate impact and mitigate both the physical risks to its operations and the transition risks associated with new regulation and a global shift to a clean energy economy. Proponents believe adopting 1.5 degree Celsius-aligned science-based targets for its full carbon footprint will help the Company mitigate these risks.

Resolved: Shareholders request American Tower, by November 1, 2023, issue near and long-term science-based GHG reduction targets aligned with the Paris Agreement's ambition of maintaining global temperature rise to 1.5 degrees Celsius and summarize plans to achieve them. The targets should cover the company's full range of operational and supply chain emissions.

Supporting Statement: In assessing targets, we recommend, at management's discretion:

- Consideration of approaches used by advisory groups like SBTi;
- Developing a transition plan that shows how the company plans to meet its goals, taking into consideration criteria used by advisory groups and investors like CDP, CA100+, and SSGA; and
- Consideration of supporting targets for renewable energy, energy efficiency, low-carbon steel, geand other measures deemed appropriate by management.

[1] https://www.cellnex.com/news/cellnex-exceeds-green-energy-emissions-targets-2021/#:~:text=Cellnex%20is%20continually%20improving%20its,achieve%20climate%20neutrality%20by%202050.

Notes:
"Proposal 4" stands in for the final proposal number that management will assign.

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 [redacted].

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

This proposal is not intended to be more than 500 words. Should it exceed 500 words after notification to the proponent then the words that exceed 500 words shall be taken out of the proposal starting with the last full sentence of the proposal and moving upwards as needed to omit full sentences.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

EXHIBIT E

December 8, 2022

VIA EMAIL

Mr. John Chevedden
[redacted]
Email: [redacted]
Phone: [redacted]

Mr. James McRitchie and Mrs. Myra K. Young
[redacted]
Email: [redacted]

Dear Mrs. Young:

I am writing about your letter dated November 27, 2022, addressed to Edmund DiSanto, Corporate Secretary of American Tower Corporation (the "***Company***"), regarding a shareholder proposal captioned "Fair Elections" (your "***Proposal***").

Before the Company can process your shareholder proposal, you need to remedy the deficiency identified in this letter so that your proposal satisfies the eligibility requirements of Rule 14a-8 under the Securities Exchange Act of 1934 ("***Rule 14a-8***"), as amended.

Rule 14a-8(c) states that (i) a person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting and (ii) a person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting. The SEC has clarified that this means that a shareholder-proponent cannot submit one proposal in his or her own name and simultaneously serve as a representative to submit a different proposal on another shareholder's behalf for consideration at the same meeting. Likewise, a representative cannot submit more than one proposal to be considered at the same meeting, even if the representative were to submit each proposal on behalf of different shareholders.[1]

On October 21, 2022, Mr. John Chevedden submitted a shareholder proposal captioned "Report Greenhouse Gas Reduction Goals" to the Company. In your Proposal, you designate Mr.

[1] *See* Rule 14a-8(c); *see also* Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8: A Small Entity Compliance Guide at https://www.sec.gov/corpfin/procedural-requirements-resubmission-thresholds-guide.

Chevedden as your agent and representative. However, under Rule 14a-8(c), Mr. Chevedden cannot serve as a representative for a different proposal on another shareholder's behalf if he has already submitted a shareholder proposal to the Company for the same shareholders' meeting. Under Rule 14a-8(f), you must remedy this deficiency by responding *within 14 calendar days* from the date you receive this letter.

I am enclosing a copy of Rule 14a-8, in case that is helpful for you.

If you require any additional information or if you would like to discuss this matter, please call me at 617-375-7500. Thank you.

Very truly yours,

Marina Breed
Vice President, Corporate Legal

cc: Edmund DiSanto
Ruth Dowling
Michael J. McCormack

§ 240.14a-8 Shareholder proposals.

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

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

(b) ***Question 2:*** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least $25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the “record” holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

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

(*2*) Your written statement that you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(*3*) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least $2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least $2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least $2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least $2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) ***Question 3:*** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

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

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

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

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

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

(f) ***Question 6:*** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

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

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

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

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

(i) ***Question 9:*** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

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

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

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

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

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

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

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

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

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

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

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

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

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§ 229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by § 240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a

policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by § 240.14a-21(b) of this chapter.

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

(12) ***Resubmissions.*** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

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

(j) ***Question 10:*** What procedures must the company follow if it intends to exclude my proposal?

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EXHIBIT F

January 13, 2023

American Tower Corporation
116 Huntington Avenue
Boston, Massachusetts 02116

Re: Stockholder Proposal on behalf of Mrs. Myra Young and Mr. James McRitchie

Ladies and Gentlemen:

We have acted as special Delaware counsel to American Tower Corporation, a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") that has been submitted to the Company on behalf of Mrs. Myra Young and Mr. James McRitchie (together, the "Proponents") for the 2023 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware on December 27, 2011 (the "Certificate of Incorporation"); (ii) the Amended and Restated Bylaws of the Company (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal requests that the Board of Directors of the Company (the "Board") adopt a bylaw provision (the "Proposed Bylaw") that would require stockholder approval for certain amendments to the Bylaws. The Proposal reads as follows:

Resolved

> Myra K. Young and other shareholders request that directors of American Tower Corporation ("Company") amend its bylaws to include the following language:
>
> Shareholder approval is required for any advance notice bylaw amendments that:
>
> 1. require nomination of candidates more than 90 days before the annual meeting,
>
> 2. impose new disclosure requirements for director nominees, including disclosures related to past and future plans, or
>
> 3. require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company's shares.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) permits a company to exclude a stockholder proposal "[i]f the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this connection, you have requested our opinion as to whether, under Delaware law, the implementation of the Proposal, if adopted by the Company's stockholders, would violate Delaware law.

For the reasons set forth below, the Proposal, in our opinion, would violate Delaware law if implemented.

DISCUSSION

Section 109(a) of the General Corporation Law of the State of Delaware (the "General Corporation Law") provides, in relevant part, that:

> [T]he power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote . . . . Notwithstanding the foregoing, any corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors.

8 Del. C. § 109(a) (emphasis added).

In accordance with Section 109(a) of the General Corporation Law, Article EIGHTH of the Certificate of Incorporation provides that:

> In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly

> authorized and empowered to make, alter, amend, and repeal the By-Laws. The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time maybe adopted, only by the majority of the entire Board of Directors **or** with the approval or consent of the holders of not less than a majority, determined in accordance with the provisions of the second paragraph of Section A of Article FOURTH, of the total number of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors.

(emphasis added). Thus, pursuant to Section 109 of the General Corporation Law and the Certificate of Incorporation, the Bylaws currently may be amended by either the Board or the stockholders of the Company, in each case acting unilaterally without the consent of the other.[1]

[1] There are two limited exceptions where a board of directors cannot amend bylaws despite a provision in the certificate of incorporation granting the board the right to amend bylaws, neither of which is applicable to the Proposal. See 8 Del. C. § 203(b)(3) ("Section 203") and 8 Del. C. § 216 ("Section 216").

Section 203 provides that the restrictions otherwise imposed by Section 203 on certain transactions with interested stockholders shall not apply to the corporation if, among other things, the stockholders adopt an amendment to the bylaws providing that the corporation elects not to be governed by Section 203. Section 203(b)(3) includes a specific provision which ensures that the election made by the stockholders cannot be overturned by a board adopted bylaw amendment. 8 Del. C. § 203(b)(3) ("A bylaw amendment adopted pursuant to this paragraph shall not be further amended by the board of directors[.]"). Similarly, in 2006, Section 216 was amended to ensure that a stockholder adopted bylaw amendment setting forth the voting standard to elect directors could not be undone by a subsequent board adopted bylaw amendment. 8 Del. C. § 216 ("A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.").

It was determined that stockholder adopted bylaw amendments pursuant to Section 203 opting out of Section 203 and stockholder adopted bylaw amendments pursuant to Section 216 setting the voting standard for the election of directors should be protected from subsequent board amendments to the bylaws which could have the effect of undermining the decision made by the stockholders. The inclusion of the prohibition on further board amendments to the bylaws in Section 203 and Section 216 highlights the fact that, absent a statutory limitation, a board of directors granted the power to amend the bylaws pursuant to the certificate of incorporation has an unfettered right to exercise such right and the stockholders cannot impinge upon that right through an amendment to the bylaws. More specifically, the inclusion of the prohibition on further board amendments to the bylaws in Section 203 and Section 216 demonstrates that the stockholders cannot unilaterally determine to protect stockholder adopted bylaw amendments by including in such amendment a provision prohibiting the board from further amending the bylaws without the stockholders' consent. If the stockholders had such power to limit the board's authority to amend the bylaws, then the protections against further board amendments to the bylaws afforded by Sections 203 and 216 would not be needed. In addition, if the Delaware General Assembly intended to protect all stockholder adopted amendments from subsequent board action or to otherwise permit the stockholders to unilaterally limit the board's ability to amend the bylaws, then, instead of amending Section 216, Section 109 of the General Corporation Law could have been amended to provide that all stockholder adopted amendments to the bylaws could not be further amended by the board or that the stockholders could unilaterally protect stockholder adopted bylaws by amending the bylaws to prohibit the board from amending the bylaws without stockholder consent. Section 109 was not so amended.

Section 109(b) of the General Corporation Law expressly subordinates the provisions of the bylaws to the provisions of the certificate of incorporation. In that regard, Section 109(b) provides that:

> The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees.

8 Del. C. § 109(b) (emphasis added).

Section 109(b) codifies the well-settled Delaware law that a provision of the bylaws that conflicts with a provision of the certificate of incorporation is invalid or a nullity. See Oberly v. Kirby, 592 A.2d 445, 458 n.6 (Del. 1991) ("[A] corporation's bylaws may never contradict its certificate of incorporation."); see also Brooks v. State ex rel. Richards, 79 A. 790, 800–01 (Del. 1911) ("A by-law that restricts or alters the voting power of stock of a corporation as established by the law of its charter, is of course void."); Sinchareonkul v. Fahnemann, 2015 WL 292314, at *6 (Del. Ch. Jan. 22, 2015) ("Each of the lower components of the contractual hierarchy must conform to the higher components. A bylaw that conflicts with the charter is void, as is a bylaw or charter provision that conflicts with the DGCL."); Centaur Partners, IV v. Nat'l Intergroup, Inc., 582 A.2d 923, 929 (Del. 1990) ("Where a by-law provision is in conflict with a provision of the charter, the by-law provision is a 'nullity.'" (quoting Burr v. Burr Corp., 291 A.2d 409, 410 (Del. Ch. 1972)). Thus, where a bylaw provision contradicts the certificate of incorporation, such bylaw provision must not be given effect. See, e.g., Airgas, Inc. v. Air Prods. & Chems., Inc., 8 A.3d 1182, 1194 (Del. 2010) (invalidating a bylaw provision that materially shortened directors' three-year terms because it was inconsistent with the certificate of incorporation that provided for three-year terms for directors); Oberly, 592 A.2d at 461 (invalidating an amendment to the bylaws of a nonstock corporation that provided that the members of the board were to be the only members of the corporation because it was inconsistent with the certificate of incorporation which provided that the members (and not the board) have the power to elect new members of the corporation); Essential Enters. Corp. v. Automated Steel Prods., Inc., 159 A.2d 288, 291 (Del. Ch. 1960) (invalidating a bylaw that authorized the removal of directors by stockholders without cause because it was inconsistent with the certificate of incorporation which provided for a staggered board of directors); Gaskill v. Gladys Belle Oil Co., 146 A. 337, 340 (Del. Ch. 1929) (holding that a bylaw unanimously adopted by stockholders which granted broader rights to the holders of the corporation's preferred stock than the rights defined in the certificate of incorporation was void).

In Centaur Partners, the Delaware Supreme Court determined that a bylaw proposed to be adopted by stockholders that provided that it "is not subject to amendment, alteration or repeal by the Board of Directors" was in conflict with the board's authority as provided for in the certificate of incorporation to amend the bylaws and hence would be invalid even if adopted by the stockholders. 582 A.2d at 929. More recently, in Airgas, the Delaware Supreme Court invalidated a stockholder adopted bylaw that purported to schedule Airgas's 2011 annual meeting just four months after its 2010 annual meeting as inconsistent with Airgas's

certificate of incorporation. 8 A.3d 1182. The Court found that the staggered board provision in Airgas's certificate of incorporation intended a term of three years for its directors. Id. at 1194. Because the bylaw proposed by Air Products materially shortened the directors' three-year term by eight months, it was inconsistent with Airgas's certificate of incorporation and was thus invalid under Section 109(b). Id. Similarly, in Prickett v. American Steel & Pump Corp., the corporation's certificate of incorporation provided for a classified board of directors with directors elected for three-year terms. 253 A.2d 86 (Del. Ch. 1969). The board of directors adopted a bylaw amendment to provide that all directors would be elected for one-year terms, but the certificate of incorporation was never amended. Id. at 88. At three consecutive annual meetings directors were elected to one-year terms. Id. The court held that the bylaw provision was inconsistent with the certificate of incorporation and therefore void. Id.

Here, in violation of Section 109(b) of the General Corporation Law, the Proposed Bylaw is plainly inconsistent with Article EIGHTH of the Certificate of Incorporation. Article EIGHTH of the Certificate of Incorporation grants the Board the power to make, alter, amend and repeal the Bylaws without stockholder approval. However, the Proposed Bylaw would require stockholder approval for certain amendments to the Bylaws, thus taking away the power currently conferred by Article EIGHTH on the Board to make, alter, amend and repeal the Bylaws without stockholder approval. The Proposal would eliminate the ability of the Board to unilaterally make certain amendments to the Bylaws, and effectively requires that the Board go to the time and expense of calling a stockholder meeting if it wants to make certain amendments to the Bylaws, effectively subjecting certain amendments to the Bylaws proposed by the Board to the same procedure required to amend the Certificate of Incorporation (i.e., a Board recommendation followed by stockholder approval). In the words of two commentators, such a requirement "renders granting of the right to (unilaterally) amend bylaws to the directors somewhat useless." Albert H. Choi & Geeyoung Min, Contractarian Theory and Unilateral Bylaw Amendments, 104 Iowa L. Rev 1, 36 (2018). Because the Proposed Bylaw would impose a material limitation upon the unconditional grant of power to amend the Bylaws provided to the Board in Article EIGHTH of the Certificate of Incorporation, the Proposed Bylaw is directly inconsistent with the Certificate of Incorporation. Therefore, the Proposed Bylaw would be violative of Delaware law and, thus, void and null.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law.

The foregoing opinion is limited to the General Corporation Law. We have not considered and express no opinion on any other laws or the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and the Proponents in connection with the matters addressed

herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

MDA/BVF/DSB

EXHIBIT G

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AMERICAN TOWER REIT, INC.", FILED IN THIS OFFICE ON THE TWENTY-SEVENTH DAY OF DECEMBER, A.D. 2011, AT 10:34 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID RESTATED CERTIFICATE IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2011, AT 11:58 O'CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

4983939 8100

AUTHENTICATION: 9255252

111337118

DATE: 12-27-11

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:34 AM 12/27/2011
FILED 10:34 AM 12/27/2011
SRV 111337118 - 4983939 FILE

RESTATED CERTIFICATE OF INCORPORATION AMERICAN TOWER REIT, INC.

American Tower REIT, Inc., a corporation organized and existing under the laws of the State of Delaware hereby certifies as follows:

1. The date of filing of the original Certificate of Incorporation of American Tower REIT, Inc. with the Secretary of State of the State of Delaware was May 17, 2011 (the "***Original Certificate***").

2. This Restated Certificate of Incorporation (this "***Restated Certificate***") amends, restates and integrates the provisions of the Original Certificate and in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time, (the "***Delaware General Corporation Law***") was duly adopted by the Board of Directors and by the sole stockholder by written consent in accordance with Sections 141(f) and 228, respectively, of the Delaware General Corporation Law.

3. The text of the Original Certificate is hereby amended and restated to read as herein set forth in full.

FIRST: The name of the corporation (hereinafter the "***Corporation***") is American Tower REIT, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows: To engage in any lawful act or activity (including, without limitation or obligation, qualifying for taxation under Sections 856 through 860, or any successor sections, of the Internal Revenue Code of 1986, as amended, or any successor law, as a "real estate investment trust" (or "***REIT***")) for which corporations may be organized under the Delaware General Corporation Law.

FOURTH: The aggregate number of shares of all classes of stock which the Corporation is authorized to issue is 1,020,000,000 shares, of which 20,000,000 shall be shares of preferred stock, $.01 par value per share (the "***Preferred Stock***"), and 1,000,000,000 shall be shares of common stock, $.01 par value per share (the "***Common Stock***").

A. GENERAL

No holder of any of the shares of stock of this Corporation, whether now or hereafter authorized or issued, shall be entitled as of right to purchase or subscribe for (i) any unissued stock of any class, or (ii) any additional shares of any class to be issued by reason of any increase of the authorized stock of the Corporation of any class, or (iii) bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable, or carrying any right to purchase or otherwise acquire, stock of any class of the Corporation. Subject to the other terms of this Restated Certificate, the Board of Directors of the Corporation (the "***Board of Directors***") may from time to time authorize by resolution the issuance of any or all shares of the Common Stock and the Preferred Stock herein authorized, together with any additional shares of any class to be issued by reason of any increase of the authorized stock of the

Corporation of any class, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable, or carrying any right to purchase or otherwise acquire, stock of any class of the Corporation, for such purposes, in such amounts, to such Persons, for such consideration and, in the case of the Preferred Stock, in one or more series, all as the Board of Directors in its sole and absolute discretion may from time to time determine and without any vote, approval, consent or other action by the stockholders, except as otherwise required by applicable law.

Every reference in this Restated Certificate to a majority or other portion of shares of stock, including without limitation the provisions set forth in Articles EIGHTH and TENTH, shall refer to such majority or other portion of the votes of such shares of stock.

The designations and the powers, preferences and rights, of the capital stock of the Corporation and the qualifications, limitations and restrictions thereof, shall be as set forth in Sections B, C, D and E below.

B. PREFERRED STOCK

The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, and to fix for each such series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors, in its sole and absolute discretion, providing for the issuance of such series and as may be permitted by the Delaware General Corporation Law, including, without limitation, the authority to determine with respect to the shares of any such series (i) whether such shares shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; (ii) whether such shares shall be entitled to receive dividends (which may be cumulative or noncumulative) and, if so, the rates and conditions of such dividends, including the times at which such dividends are payable, the preferences in relation to the dividends payable on any other class or classes or any other series of the same or any other class or classes of stock, and whether such dividends are payable, in whole or in part, in cash, in additional shares of such series, or in any other series of the same or any other class or classes of stock, or in other securities of the Corporation, or in any combination of the foregoing; (iii) the rights of such shares in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of such shares; (iv) whether such shares shall be convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, or any other securities of the Corporation, and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board of Directors shall determine; (v) whether the series shall have a sinking fund for the redemption or purchase of such shares, and, if so, the terms and amount of such sinking fund; (vi) the voting powers, if any, of such shares; and (vii) any other relative rights, preferences or limitations.

C. COMMON STOCK

1. Voting Rights and Powers. With respect to all matters upon which stockholders are entitled to vote, the holders of the outstanding shares of Common Stock shall be entitled to one (1) vote in person or by proxy for each share of Common Stock outstanding in the name of such stockholders on the record of stockholders.

2. Stock Splits, Dividends and Distributions. The Corporation shall not in any manner subdivide (by stock split or otherwise) or combine (by reverse stock split or otherwise), or pay or declare

any stock dividend on, the outstanding shares of the Common Stock unless the outstanding Common Stock shall be proportionately subdivided or combined or the holders thereof shall have received a proportionate dividend.

3. Distribution of Assets Upon Liquidation. In the event the Corporation shall be liquidated, dissolved or wound up, whether voluntarily or involuntarily, after there shall have been paid or set aside for the holders of all shares of the Preferred Stock then outstanding the full amounts to which they may be entitled, if any, under the resolutions authorizing the issuance of such Preferred Stock, the net assets of the Corporation remaining thereafter shall be distributed ratably to each share of Common Stock. For the purposes of this paragraph, neither the merger, consolidation or business combination of the Corporation with or into any other entity in which the stockholders of the Corporation receive capital stock and/or other securities (including debt securities) of the surviving entity (or of the direct or indirect parent entity thereof), nor the sale, lease or transfer by the Corporation of all or any part of its business and assets, nor the reduction of the capital stock of the Corporation, shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

D. STOCK OWNERSHIP AND THE FEDERAL COMMUNICATIONS LAWS

1. *Definitions.* For the purposes of this Article FOURTH, Section D, the following terms shall have the following meanings (references to the sections shall be to the sections of this Article FOURTH, Section D);

The term "***CFIUS Review***" shall mean review of any transaction by the Committee on Foreign Investment in the United States ("***CFIUS***"), or any successor body, pursuant to Section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007, and its implementing regulations, and any successor laws and regulations.

The term "***Communications Act***" means the Communications Act of 1934, as amended, and regulations thereunder, and any successor laws and regulations.

The term "***Fair Market Value***" shall mean, with respect to a share of the Corporation's capital stock of any class or series, the volume weighted average sales price for such a share on the New York Stock Exchange or, if such stock is not listed on such exchange, on the principal U.S. registered securities exchange on which such stock is listed, during the 30 most recent days on which shares of stock of such class or series shall have been traded preceding the day on which notice of redemption shall be given pursuant to Section 4; *provided, however*, that if shares of stock of such class or series are not traded on any securities exchange, "Fair Market Value" shall be determined by the Board of Directors in good faith; and *provided, further*, that "Fair Market Value" as to any stockholder who purchased his stock within 120 days of a Redemption Date shall be the lesser of the amount determined in accordance with the foregoing and the purchase price paid by him.

The term "***FCC***" means the Federal Communications Commission, and any successor agency.

The term "***Federal Communications Laws***" means any law of the United States now or hereafter in effect (and any regulation thereunder), including, without limitation, the Communications Act, to which the Corporation is subject as a result of its ownership, possession or other interest in communications-related infrastructure, licenses or authorizations.

The term "***person***" shall include not only natural persons but partnerships (limited or general), associations, corporations, limited liability companies, joint ventures and other legal entities.

The term "***Redemption Date***" shall mean the date fixed by the Board of Directors for the redemption of any shares of stock of the Corporation pursuant to Section 4.

The term "***Redemption Securities***" shall mean any debt or equity securities of the Corporation, any subsidiary of the Corporation or any other corporation or other entity, or any combination thereof, having such terms and conditions as shall be approved by the Board of Directors and which, together with any cash to be paid as part of the redemption price, in the opinion of any nationally recognized investment banking firm selected by the Board of Directors (which may be a firm which provides other investment banking, brokerage or other services to the Corporation), has a value, at the time notice of redemption is given pursuant to Section 4, at least equal to the Fair Market Value of the shares to be redeemed pursuant to Section 4 (assuming, in the case of Redemption Securities to be publicly traded, such Redemption Securities were fully distributed and subject only to normal trading activity).

The term "***regulation***" shall include not only regulations but rules, published policies and published controlling interpretations by the FCC or any other administrative agency or body empowered to administer a statutory provision of the Federal Communications Laws.

2. Restrictions on Stock Ownership or Transfer. As contemplated by this Article FOURTH, Section D, the Corporation may restrict the ownership, or proposed ownership, of shares of capital stock of the Corporation by any person if such ownership or proposed ownership (a) is or could be inconsistent with, or in violation of, any provision of the Federal Communications Laws, (b) limits or impairs or could limit or impair any business activities or proposed business activities of the Corporation under the Federal Communications Laws or (c) subjects or could subject the Corporation to CFIUS Review or to any provision of the Federal Communications Laws, including those requiring any review, authorization or approval, to which the Corporation would not be subject but for such ownership or proposed ownership, including, without limitation, Section 310 of the Communications Act and regulations relating to foreign ownership, multiple ownership, or cross-ownership (clauses (a), (b) and (c) collectively, "***FCC Regulatory Limitations***").

3. Requests for Information. If the Corporation believes that the ownership or proposed ownership of shares of capital stock of the Corporation by any person may result in an FCC Regulatory Limitation, such person shall furnish promptly to the Corporation such information (including, without limitation, information with respect to citizenship, other ownership interests and affiliations) as the Corporation shall request.

4. Denial of Rights, Refusal to Transfer. If (a) any person from whom information is requested pursuant to Section 3 of this Article FOURTH, Section D should not provide all the information requested by the Corporation, or (b) the Corporation shall conclude that a stockholder's ownership or proposed ownership of, or that a stockholder's exercise of any rights of ownership with respect to, shares of capital stock of the Corporation results or could result in an FCC Regulatory Limitation, then, in the case of either clause (a) or clause (b), the Corporation may (i) refuse to permit the transfer of shares of capital stock of the Corporation to such proposed stockholder, (ii) to the fullest extent permitted by law, suspend those rights of stock ownership the exercise of which causes or could cause such FCC Regulatory Limitation, (iii) require the conversion of any or all shares of Preferred Stock held by such stockholder into a number of shares of Common Stock of equivalent value, (iv) redeem such shares of capital stock of the Corporation held by such stockholder in accordance with the terms and conditions set forth in this Section 4, and/or (v) exercise any and all appropriate remedies, at law or in equity, in any court of competent jurisdiction, against any such stockholder or proposed transferee, with a view towards obtaining such information or preventing or curing any situation which causes or could cause an FCC Regulatory Limitation. Any such refusal of transfer or suspension of rights pursuant to clauses (i) and

(ii), respectively, of the immediately preceding sentence shall remain in effect until the requested information has been received and the Corporation has determined that such transfer, or the exercise of such suspended rights, as the case may be, will not result in an FCC Regulatory Limitation. The terms and conditions of redemption pursuant to clause (iv) of this Section 4 shall be as follows:

(i) the redemption price of any shares to be redeemed pursuant to this Section 4 shall be equal to the Fair Market Value of such shares;

(ii) the redemption price of such shares may be paid in cash, Redemption Securities or any combination thereof;

(iii) if less than all such shares are to be redeemed, the shares to be redeemed shall be selected in such manner as shall be determined by the Board of Directors, which may include selection first of the most recently purchased shares thereof, selection by lot or selection in any other manner determined by the Board of Directors;

(iv) at least 15 days' written notice of the Redemption Date shall be given to the record holders of the shares selected to be redeemed (unless waived in writing by any such holder); *provided* that the Redemption Date may be the date on which written notice shall be given to record holders if the cash or Redemption Securities necessary to effect the redemption shall have been deposited in trust for the benefit of such record holders and subject to immediate withdrawal by them upon surrender of the stock certificates for their shares to be redeemed;

(v) from and after the Redemption Date, any and all rights of whatever nature in respect of the shares selected for redemption (including, without limitation, any rights to vote or participate in dividends declared on stock of the same class or series as such shares), shall cease and terminate and the holders of such shares shall thenceforth be entitled only to receive the cash or Redemption Securities payable upon redemption; and

(vi) such other terms and conditions as the Board of Directors shall determine.

5. Legends. The Corporation shall instruct the Corporation's transfer agent that the shares of capital stock of the Corporation are subject to the restrictions set forth in this Article FOURTH, Section D and such restrictions shall be noted conspicuously on the certificate or certificates representing such capital stock or, in the case of uncertificated securities, contained in the notice or notices sent as required by applicable law.

E. RESTRICTIONS ON TRANSFER AND OWNERSHIP OF SHARES

1. *Definitions*. For purposes of this Article FOURTH, Section E, the following terms shall have the following meanings (references to sections shall be to the sections of this Article FOURTH, Section E):

The term "***Beneficial Owner***" means, with respect to any shares of Equity Stock, (i) any Person who owns such shares, whether directly or indirectly, (ii) any Person for whose benefit such shares are held through a nominee, (iii) any Person who would be treated as the owner of such shares through the application of Section 544 of the Code, as modified by Section 856(h) of the Code, and (iv) any Person who would be considered a beneficial owner of such shares for purposes of Rule 13d-3 under the Exchange Act, provided, however, that in determining the number of shares Beneficially Owned by a Person, no share shall be counted more than once with respect to that Person. Whenever a Person

Beneficially Owns shares of Equity Stock that are not actually outstanding (e.g., shares issuable upon the exercise of an option, the conversion of a convertible security or the exchange of an exchangeable security) ("***Option Shares***"), then, whenever this Restated Certificate requires a determination of the percentage of outstanding shares of a class of Equity Stock Beneficially Owned by such Person, the Option Shares Beneficially Owned by such Person shall also be deemed to be outstanding. The terms "Beneficial Ownership," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

The term "***Business Day***" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

The term "***Charitable Beneficiary***" shall mean American Red Cross, until such time as the Trustee designates one or more other nonprofit organizations pursuant to Section 3.7.

The term "***Constructive Ownership***" shall mean ownership of Equity Stock by a Person, whether the interest in the shares of Equity Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

The term "***Code***" shall mean the Internal Revenue Code of 1986, as amended, and the regulations and rulings promulgated thereunder, all as from time to time in effect, or any successor law, regulations, and rulings, and any reference to any statutory, regulatory or ruling provision shall be deemed to be a reference to any successor statutory, regulatory or ruling provision.

The term "***Equity Stock***" shall mean all classes or series of stock of the Corporation, including, without limitation, the Common Stock or any series of the Preferred Stock.

The term "***Excepted Holder***" shall mean a stockholder of the Corporation for whom an Excepted Holder Limit is created by this Restated Certificate or by the Board of Directors pursuant to Section 2.7.

The term "***Excepted Holder Limit***" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors pursuant to Section 2.7, and subject to adjustment pursuant to Section 2.8, the percentage limit established by the Board of Directors pursuant to Section 2.7.

The term "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

The term "***Initial Date***" shall mean the effective time of the merger of American Tower Corporation with and into the Corporation pursuant to that Agreement and Plan of Merger, dated as of August 24, 2011 by and between American Tower Corporation and the Corporation.

The term "***Market Price***" on any date shall mean, with respect to any class or series of outstanding shares of Equity Stock, the Closing Price for such Equity Stock on such date. The "Closing Price" on any date shall mean the last sale price for such Equity Stock, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Equity Stock, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if such Equity Stock is not listed or admitted to trading on the NYSE, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such Equity Stock is listed or

admitted to trading or, if such Equity Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system that may then be in use or, if such Equity Stock is not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Equity Stock selected by the Board of Directors or, in the event that no trading price is available for such Equity Stock, the fair market value of the Equity Stock, as determined in good faith by the Board of Directors.

The term "***Non-Transfer Event***" shall mean any event or other changes in circumstances other than a purported Transfer, including, without limitation, any change in the value of any shares of Equity Stock, any redemption of any shares of Equity Stock, and any forfeiture of any shares of Equity Stock pursuant to Article FOURTH, Section D.

The term "***NYSE***" shall mean the New York Stock Exchange.

The term "***Person***" shall mean an individual, corporation, firm, unincorporated organization, partnership, limited liability company, joint venture, estate, trust (inter vivos or testamentary, including any trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, estate of a deceased, insane or incompetent individual, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company, bank, trust company, land trust, business trust, government or quasi-governmental authority, or agency or political subdivision thereof, or other entity and also includes a "group" as that term is used for purposes of Rule 13d-5(b) or Section 13(d)(3) of the Exchange Act and a group to which an Excepted Holder Limit applies.

The term "***Prohibited Owner***" shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who, but for the provisions of Section 2.1, would beneficially own (determined under the principles of Section 856(a)(5) of the Code), Beneficially Own or Constructively Own shares of Equity Stock in excess of the Stock Ownership Limit, and if appropriate in the context, shall also mean any Person who would have been the record or actual owner of the shares that the Prohibited Owner would have so owned.

The term "***Restriction Termination Date***" shall mean the first day after the Initial Date on which the Board of Directors determines pursuant to Article FIFTH, Section (g) of this Restated Certificate that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT or that compliance with all or any of the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of shares of Equity Stock set forth herein is no longer required in order for the Corporation to qualify as a REIT, but only with respect to such restrictions and limitations.

The term "***Stock Ownership Limit***" shall mean not more than 9.8 percent (or such other amount designated by the Board of Directors pursuant to Section 2.8 in the aggregate or with respect to any class or series of Equity Stock) (i) in value of the aggregate of the outstanding shares of Equity Stock or (ii) in value or number of shares, whichever is more restrictive, of the outstanding shares of any class or series of Equity Stock.

The term "***Transfer***" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire beneficial ownership (determined under the principles of Section 856(a)(5) of the Code), Beneficial Ownership or Constructive Ownership of Equity Stock or the right to vote (other than revocable proxies or consents given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act) or receive dividends on Equity

Stock, or any agreement to take any such actions or cause any such events, including (a) the granting or exercise of any option (or any disposition of any option) or entering into any agreement for the sale, transfer or other disposition of Equity Stock (or of beneficial ownership (determined under the principles of Section 856(a)(5) of the Code), Beneficial Ownership or Constructive Ownership of Equity Stock), (b) any disposition of any securities or rights convertible into or exchangeable for Equity Stock or any interest in Equity Stock or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in beneficial ownership (determined under the principles of Section 856(a)(5) of the Code), Beneficial Ownership or Constructive Ownership of Equity Stock; in each case, whether voluntary or involuntary, whether owned of record, beneficially owned (determined under the principles of Section 856(a)(5) of the Code), Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

The term "***Trust***" shall mean any trust provided for in Section 3.1.

The term "***Trustee***" shall mean the Person unaffiliated with the Corporation and any Prohibited Owner that is a "United States person" within the meaning of Section 7701(a)(30) of the Code and is appointed by the Corporation to serve as trustee of the Trust.

2. Equity Stock

2.1 Ownership Limitations. During the period commencing on the Initial Date and prior to the Restriction Termination Date, but subject to Section 4:

(a) Basic Restrictions

(i) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own shares of Equity Stock in excess of the Stock Ownership Limit, and no Excepted Holder shall Beneficially Own or Constructively Own shares of Equity Stock in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) No individual (within the meaning of Section 542(a)(2) of the Code as modified by Section 856(h) of the Code) shall Beneficially Own shares of Equity Stock in excess of 9.8 percent in value of the aggregate outstanding shares of Equity Stock.

(iii) No Person shall Beneficially Own or Constructively Own shares of Equity Stock to the extent that such Beneficial Ownership or Constructive Ownership of Equity Stock would result in the Corporation failing to qualify as a REIT.

(iv) No Person shall Constructively Own shares of Equity Stock to the extent that such Constructive Ownership would cause any income of the Corporation that would otherwise qualify as "rents from real property" for purposes of Section 856(d) of the Code to fail to qualify as such.

(v) Notwithstanding any other provisions contained herein but subject to Section 4, any Transfer of shares of Equity Stock that, if effective, would result in the Equity Stock being beneficially owned by fewer than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void AB INITIO, and the intended transferee shall acquire no rights in such shares of Equity Stock.

(b) Transfer in Trust. If any Transfer or Non-Transfer Event occurs which, if effective or otherwise, would result in any Person Beneficially Owning or Constructively Owning (as applicable) shares of Equity Stock in violation of Section 2.1(a)(i), (ii), (iii) or (iv),

(i) then that number of shares of the Equity Stock the Beneficial Ownership or Constructive Ownership (as applicable) of which otherwise would cause such Person to violate Section 2.1(a)(i), (ii), (iii) or (iv) (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Section 3, effective as of the close of business on the Business Day prior to the date of such Transfer or Non-Transfer Event, and such Person (or, if different, the direct or beneficial owner of such shares) shall acquire no rights in such shares or shall be divested of its rights in such shares, as applicable, and to the extent that, upon a transfer of shares of Equity Stock pursuant to this Section 2.1(b)(i), a violation of any provision of Section 2.1(a) would nonetheless be continuing, then shares of Equity Stock shall be transferred to that number of Trusts, each having a distinct Trustee and a Charitable Beneficiary or Beneficiaries that are distinct from those of each other Trust, such that there is no violation of any provision of Section 2.1(a); or

(ii) if the transfer to the Trust or Trusts described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 2.1(a)(i), (ii), (iii) or (iv), then the Transfer of that number of shares of Equity Stock that otherwise would cause any Person to violate Section 2.1(a)(i), (ii), (iii) or (iv) (rounded up to the nearest whole share) shall be void AB INITIO, and the intended transferee shall acquire no rights in such shares of Equity Stock.

2.2 Remedies for Breach. If the Board of Directors or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or Non-Transfer Event has taken place that results in a violation of Section 2.1(a) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership, Constructive Ownership or beneficial ownership (determined under the principles of Section 856(a)(5) of the Code) of any shares of Equity Stock in violation of Section 2.1(a) (whether or not such violation is intended), the Board of Directors or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or Non-Transfer Event or otherwise prevent such violation, including, without limitation, causing the Corporation to repurchase shares, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer or Non-Transfer Event; provided, however, that any Transfer or attempted Transfer in violation of Section 2.1(a) (or Non-Transfer Event that results in a violation of Section 2.1(a)) shall automatically result in the transfer to the Trust described above, or, if applicable, shall be void AB INITIO as provided above irrespective of any action (or non-action) by the Board of Directors or a committee thereof.

2.3 Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership, Constructive Ownership or beneficial ownership (determined under the principles of Section 856(a)(5) of the Code) of shares of Equity Stock that will or may violate Section 2.1(a) or any Person who held or would have owned shares of Equity Stock that resulted in a transfer to the Trust pursuant to the provisions of Section 2.1(b) shall immediately give written notice to the Corporation of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer on the Corporation's qualification as a REIT.

2.4 Owners Required to Provide Information. From the Initial Date and prior to the Restriction Termination Date:

(a) every owner of five percent or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of the outstanding shares of any class or series of Equity Stock, upon request following the end of each taxable year of the Corporation, shall provide in writing to the Corporation the name and address of such owner, the number of shares of each class and series of Equity Stock and other shares of the Equity Stock Beneficially Owned by it and a description of the manner in which such shares are held. Each such owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's qualification as a REIT and to ensure compliance with the Stock Ownership Limit; and

(b) each Person who is a Beneficial Owner or Constructive Owner of Equity Stock and each Person (including the stockholder of record) who is holding Equity Stock for a Beneficial Owner or Constructive Owner shall provide in writing to the Corporation such information as the Corporation may request, in good faith, in order to determine the Corporation's qualification as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

2.5 Remedies Not Limited. Subject to Article FIFTH, Section (g) of this Restated Certificate, nothing contained in this Section 2 shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders in preserving the Corporation's qualification as a REIT.

2.6 Ambiguity. The Board of Directors shall have the power to determine the application of the provisions of this Section 2 and Section 3 and any definition contained in Section 1, including in the case of an ambiguity in the application of any of the provisions of this Section 2, Section 3, or any such definition, with respect to any situation based on the facts known to it. In the event this Section 2 or Section 3 requires an action by the Board of Directors and this Restated Certificate fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Sections 1, 2 or 3. Without limitation of the foregoing, in response to shares (or other securities) forfeited under Article FOURTH, Section D, the Board of Directors may apply the Stock Ownership Limit, any Excepted Holder Limit, and the ownership limitations of Section 2.1(a) in any fashion that conservatively measures the Corporation's qualification as a REIT, for example, treating such forfeited shares (or other securities) as outstanding and in the numerators of the Person who forfeited such shares (or other securities) but at the same time treating such forfeited shares (or other securities) as no longer outstanding and excluded from the denominators of other Persons.

2.7 Exceptions

(a) Subject to Section 2.1(a)(iii), the Board of Directors, in its sole discretion, may prospectively or retroactively exempt a Person from one or more of the ownership limitations set forth in Section 2.1(a)(i) and establish or increase an Excepted Holder Limit for such Person, may waive the provisions of Section 2.1(a)(ii) with respect to a Person, and/or may prospectively or retroactively waive the provisions of Section 2.1(a)(iv) with respect to a Person if:

(i) the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that such Person's Beneficial Ownership and Constructive Ownership of such shares of Equity Stock in excess of the Stock Ownership Limit or in violation of the limitations imposed by Section 2.1(a)(ii) or Section 2.1(a)(iv), as applicable, will not now or in the future jeopardize the Corporation's ability to qualify as a REIT under the Code; and

(ii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Sections 2.1 through 2.6) will result in such shares of Equity Stock being automatically transferred to a Trust in accordance with Sections 2.1(b) and 3.

(b) Prior to granting any exemption or waiver or creating any Excepted Holder Limit pursuant to Section 2.7(a), the Board of Directors may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Corporation's qualification as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board of Directors may impose such conditions or restrictions as it deems appropriate in connection with granting such exemption or waiver or creating any Excepted Holder Limit.

(c) Subject to Section 2.1(a)(iii), an underwriter or placement agent (or Person acquiring securities for a similar purpose and function) that participates in a public offering or a private placement of Equity Stock (or securities convertible into or exchangeable for Equity Stock) may Beneficially Own and Constructively Own shares of Equity Stock (or securities convertible into or exchangeable for Equity Stock) in excess of the Stock Ownership Limit but only to the extent necessary to facilitate such public offering or private placement.

(d) The Board of Directors may reduce the Excepted Holder Limit for an Excepted Holder only: (i) with the written consent of such Excepted Holder at any time, or (ii) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Stock Ownership Limit.

2.8 Increase or Decrease in Stock Ownership Limit. Subject to Section 2.1(a)(iii), the Board of Directors may from time to time increase the Stock Ownership Limit (or any portion thereof) for one or more Persons and decrease the Stock Ownership Limit (or any portion thereof) for all other Persons; provided, however, that (i) any such decreased Stock Ownership Limit (or portion thereof) will not be effective for any Person whose ownership in Equity Stock is in excess of the decreased Stock Ownership Limit (or portion thereof) until such time as such Person's ownership in Equity Stock equals or falls below the decreased Stock Ownership Limit (or such decreased portion thereof), but any further Transfers of any Equity Stock resulting in such Person's Beneficial Ownership or Constructive Ownership thereof creating an increased excess over the decreased Stock Ownership Limit (or portion thereof) will be in violation of the decreased Stock Ownership Limit (or portion thereof); and (ii) any new Stock Ownership Limit (or portion thereof) would not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) if five unrelated individuals were to Beneficially Own the five largest amounts of Equity Stock permitted to be Beneficially Owned under such new Stock Ownership Limit, taking into account clause (i) of this proviso permitting ownership in excess of the decreased Stock Ownership Limit (or portion thereof) in certain cases.

2.9 Legend. Each certificate for shares of Equity Stock, if certificated, shall bear a legend that substantially describes the foregoing restrictions on transfer and ownership, as well as the legend required by Article Fourth, Section D.5, or, instead of such legend, the certificate, if any, may reference such restrictions and state that the Corporation will furnish a full statement about restrictions on transferability and ownership to a stockholder on request and without charge.

3. Transfer of Equity Stock in Trust

3.1 Ownership in Trust. Upon any purported Transfer or Non-Transfer Event described in Section 2.1(b) that would result in a transfer of shares of Equity Stock to a Trust, such shares of Equity Stock shall be deemed to have been transferred to the Trustee as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported Transfer or Non-Transfer Event that results in the transfer to the Trust pursuant to Section 2.1(b). The Trustee shall be appointed by the Corporation and shall be a Person that (1) is a "United States person" within the meaning of Section 7701(a)(30) of the Code and (2) is unaffiliated with the Corporation and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Corporation as provided in Section 3.7.

3.2 Status of Shares Held by the Trustee. Shares of Equity Stock held by the Trustee shall be issued and outstanding shares of Equity Stock of the Corporation. The Prohibited Owner shall have no rights in the shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any shares held in trust by the Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the shares held in the Trust. The Prohibited Owner shall have no claim, cause of action or other recourse whatsoever against the purported transferor of such shares.

3.3 Ordinary Dividend and Voting Rights. The Trustee shall have all voting rights and rights to ordinary dividends with respect to shares of Equity Stock held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any ordinary dividend paid prior to the discovery by the Corporation that the shares of Equity Stock have been transferred to the Trustee shall be paid by the recipient of such dividend to the Trustee upon demand and any ordinary dividend authorized but unpaid shall be paid when due to the Trustee. Any ordinary dividend so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall not possess any rights to vote shares held in the Trust and, subject to Delaware law, effective as of the date that the shares of Equity Stock have been transferred to the Trust, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Corporation that the shares of Equity Stock have been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Corporation has already taken corporate action, as determined by the Board of Directors, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Section E, until the Corporation has received notification that shares of Equity Stock have been transferred into a Trust, the Corporation shall be entitled to rely on its share transfer and other stockholder records for purposes of preparing lists of stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of stockholders.

3.4 Rights upon Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Company, the Trustee shall be entitled to receive, ratably with each other holder of Equity Stock of the class or series of Equity Stock held in the Trust, that portion of the assets of the Company available for distribution to the holders of such class or series (determined based upon the ratio that the number of shares of such class or series of Equity Stock held by the Trustee bears to the total number of shares of such class or series of Equity Stock then outstanding). The Trustee shall distribute any such assets received in respect of the Equity Stock held in the Trust in any liquidation, dissolution or winding up or distribution of the assets of the Company, in accordance with Section 3.5.

3.5 Extraordinary Distribution and Sale of Shares by Trustee. As soon as reasonably practicable after receiving notice from the Corporation that shares of Equity Stock have been transferred

to the Trust (and no later than 20 days after receiving notice in the case of shares of Equity Stock that are listed or admitted to trading on any national securities exchange), the Trustee of the Trust shall sell the shares held in the Trust to a person whose ownership of the shares will not violate the ownership limitations set forth in Section 2.1(a). Upon such sale, the interest of the Charitable Beneficiary in the shares sold shall terminate. Upon any such sale or receipt by the Trust of an extraordinary distribution, the Trustee shall distribute the net proceeds of the sale or extraordinary distribution to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 3.5. The Prohibited Owner shall receive the lesser of (a) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Trust (e.g., in the case of a gift, devise or other such transaction or in the case of a Non-Transfer Event), the Market Price of the shares on the day of the event causing the shares to be held in the Trust, in each case reduced by any amounts previously received by the Prohibited Owner pursuant to this Section 3.5 in connection with prior extraordinary distributions and (b) the sales or extraordinary distribution proceeds received by the Trustee (net of any commissions and other expenses of the Trustee as provided in Section 3.8) from the sale or other disposition of the shares held in the Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of ordinary dividends which has been paid to the Prohibited Owner and is owed by the Prohibited Owner to the Trustee pursuant to Section 3.3. Any net sales proceeds and extraordinary distributions in excess of the amount payable to the Prohibited Owner shall be promptly distributed to the Charitable Beneficiary. If, prior to the discovery by the Corporation that shares of Equity Stock have been transferred to the Trustee, such shares are sold by a Prohibited Owner, then (i) such shares shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Prohibited Owner received an amount for such shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 3.5, such excess shall be paid to the Trustee upon demand and, when received, shall be promptly distributed to the Charitable Beneficiary.

3.6 Purchase Right in Stock Transferred to the Trustee. Shares of Equity Stock transferred to the Trustee shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Trust (or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the Trust (e.g., in the case of a gift, devise or other such transaction or in the case of a Non-Transfer Event), the Market Price of the shares on the day of the event causing the shares to be held in the Trust) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer until the Trustee has sold the shares held in the Trust pursuant to Section 3.5. Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale, reduced by any amounts previously received by the Prohibited Owner pursuant to Section 3.5 in connection with prior extraordinary distributions, to the Prohibited Owner; provided, however, that the Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and other distributions which has been paid to the Prohibited Owner and is owed by the Prohibited Owner to the Trustee pursuant to Section 3.3. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be promptly distributed to the Charitable Beneficiary.

3.7 Designation of Charitable Beneficiaries. By written notice to the Trustee, the Corporation may change the Charitable Beneficiary by designating one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that (i) the shares of Equity Stock held in the Trust would not violate the restrictions set forth in Section 2.1(a) in the hands of such Charitable Beneficiary and (ii) each such organization must be organized under the laws of the United States or any state thereof and must be described in Section 501(c)(1) or Section 501(c)(3) of the Code, and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A) (other than clauses (vii) and (viii) thereof), 2055 and 2522 of the Code. Neither the failure of the Corporation to make such designation nor the failure of the Corporation to appoint the Trustee

before the automatic transfer provided for in Section 2.1(b)(i) shall make such transfer ineffective, provided that the Corporation thereafter makes such designation and appointment. The designation of a nonprofit organization as a Charitable Beneficiary shall not entitle such nonprofit organization to serve in such capacity and the Corporation may, in its sole discretion, designate a substitute or additional nonprofit organization meeting the requirements of this Section 3.7 as the Charitable Beneficiary at any time and for any or no reason. Any determination by the Corporation with respect to the application of this Article FOURTH, Section E shall be binding on each Charitable Beneficiary.

3.8 Costs, Expenses and Compensation of Trustee and the Company. The Trustee shall be indemnified by the Company or from the proceeds from the sale of shares of Equity Stock held in the Trust, as further provided in this Article FOURTH, Section E, for its costs and expenses reasonably incurred in connection with conducting its duties and satisfying its obligations pursuant to this Article FOURTH, Section E. The Trustee shall be entitled to receive reasonable compensation for services provided by the Trustee in connection with serving as a Trustee, the amount and form of which shall be determined by agreement of the Board of Directors and the Trustee. Costs, expenses and compensation payable to the Charitable Trustee pursuant to this Section 3.8 may be funded from the Trust or by the Company. The Company shall be entitled to reimbursement on a first priority basis (after payment in full of amounts payable to the Trustee pursuant to this Section 3.8) from the Trust for any such amounts funded by the Company. Costs and expenses incurred by the Company in the process of enforcing the ownership limitation set forth in Section 2.1(a), in addition to reimbursement of costs, expenses and compensation of the Trustee which have been funded by the Company, may be collected from the Trust.

4. NYSE Transactions. Nothing in this Article FOURTH, Section E shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any other provision of this Article FOURTH, Section E and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article FOURTH, Section E.

5. Enforcement. The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article FOURTH, Section E. The Board of Directors shall have all power and authority necessary or advisable to implement the provisions of this Article FOURTH, Section E.

6. Non-Waiver. No delay or failure on the part of the Corporation or the Board of Directors in exercising any right hereunder shall operate as a waiver of any right of the Corporation or the Board of Directors, as the case may be, except to the extent specifically waived in writing.

7. Severability. If any provision of this Article FOURTH, Section E or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provisions shall be affected only to the extent necessary to comply with the determination of such court.

FIFTH: For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders, it is further provided that:

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities herein or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Delaware, of this Restated Certificate and the By-Laws of the Corporation. Except as

otherwise provided by the Delaware General Corporation Law, any committee of the Board of Directors shall have and may exercise, to the extent provided in the By-Laws of the Corporation or by the resolutions of the Board of Directors, all of the powers and authority of the Board of Directors of the Corporation in the management of the business and affairs of the Corporation;

(b) The number of directors of the Corporation shall be as specified in the By-Laws of the Corporation but such number may from time to time be increased or decreased in such manner as may be prescribed by the By-Laws;

(c) Newly created directorships resulting from any increase in the authorized number of directors or any vacancy in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or otherwise shall, subject to the provisions of and except as otherwise provided by applicable law, this Restated Certificate, the By-Laws of the Corporation or by resolution of the Board of Directors, be filled by a majority vote of the directors then in office, though less than a quorum, or by a sole remaining director, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class of directors to which they have been chosen expires. If there are no directors in office, any officer or stockholder may call a special meeting of stockholders in accordance with the provisions of the By-Laws of the Corporation, at which meeting such vacancies shall be filled. No decrease in the authorized number of directors shall shorten the term of any incumbent director;

(d) Unless and except to the extent that the By-Laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot. Directors need not be stockholders;

(e) In the event that any shares of Common Stock are listed and quoted on a national securities exchange and/or quoted on the Nasdaq National Market, the Board of Directors shall ensure, and shall have all power and authority to ensure, that the membership of the Board of Directors shall at all times be consistent with the applicable rules and regulations, if any, of such exchange and/or the National Association of Securities Dealers, Inc., as the case may be, for the Common Stock to be eligible for listing and quotation on such exchange and/or for quotation on the Nasdaq National Market;

(f) The Board of Directors shall ensure, and shall have all power and authority to ensure, that the composition of the Board of Directors of the Corporation and its Subsidiaries and the persons acting as officers of the Corporation and its Subsidiaries complies at all times with the provisions of the Communications Act (as defined in Article FOURTH, Section D) with respect to individuals who are Aliens serving on such Boards of Directors or as such officers; and

(g) The Corporation shall seek to elect and maintain its status and taxation as a REIT under Sections 856-860, or any successor sections, of the Internal Revenue Code of 1986, as amended (or corresponding provisions of subsequent revenue laws). In furtherance of the foregoing, the Board of Directors shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as in its sole judgment and discretion are desirable, to preserve the qualification of the Corporation as a REIT. Notwithstanding the foregoing, if a majority of the Board of Directors determines that it is no longer in the best interest of the Corporation to continue to have the Corporation qualify as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation's REIT election. The Board of Directors may also determine that compliance with any restrictions or limitations on stock ownership and transfers set forth in Article FOURTH, Section E is no longer required for REIT election and taxation.

As used in this Article FIFTH, the term "***Alien***" shall mean (i) a person who is a citizen of a country other than the United States; (ii) a representative of a person who is a citizen of a country other than the United States; (iii) a representative of an entity owned or controlled by a citizen of a country other than the United States or organized under the laws of a government other than the government of the United States or any state, territory or possession of the United States; and (iv) any other person included in the definitions of persons restricted by the foreign ownership or voting level provisions of Section 310(b)(3) or (4) of the Communications Act.

SIXTH: No director shall be personally liable to the Corporation or any stockholder for monetary damages for breach of fiduciary duty as a director, except, in addition to any and all other requirements for such liability, (i) for any breach of such directors' 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) to the extent provided under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction for which such director derived an improper personal benefit. Neither the amendment nor repeal of this Article SIXTH nor the adoption of any provision of this Restated Certificate inconsistent with this Article SIXTH shall reduce, eliminate, or adversely affect the effect of this Article SIXTH in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article SIXTH, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

SEVENTH: The Corporation shall indemnify and hold harmless certain Persons as follows.

A. Indemnification.

1. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is a party or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he, or a person for whom he is the legal representative, is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise or non profit entity against all liability, losses, expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise or non profit entity against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the

extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

3. To the extent that any person referred to in paragraphs 1 or 2 has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to therein, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

4. Notwithstanding anything contained in this Article SEVENTH, except for proceedings to enforce rights provided in this Article SEVENTH, the Corporation shall not be obligated under this Article SEVENTH to provide any indemnification or any payment or reimbursement of expenses to any director, officer, employee or other person in connection with a proceeding (or part thereof) initiated by such person (which shall not include counterclaims or cross-claims initiated by others) unless the Board of Directors has authorized or consented to such proceeding (or part thereof) in a resolution adopted by the Board of Directors.

B. Authorization. Any indemnification under Section 1 of this Article SEVENTH (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, partner, member, trustee, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 of this Article SEVENTH. Such determination shall be made with respect to a person who is a director or officer at the time of such determination: (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (c) if there are no such directors or if such directors so directs, by independent legal counsel in written opinion, or (d) by the stockholders.

C. Expense Advance. Expenses (including attorneys' fees) reasonably incurred by a current officer or director of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid or reimbursed by the Corporation in advance of the final disposition of such action, suit or proceeding. However, any such officer or director seeking such payment or reimbursement must commit in writing that he or she shall repay any such amounts advanced if it is ultimately determined that he or she is not, in fact, entitled to be indemnified by the Corporation pursuant to this Article SEVENTH. Such expenses (including attorneys' fees) incurred by former officers or directors or other employees or agents of the Corporation may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

D. Nonexclusivity. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article SEVENTH shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, partner, member, trustee, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

E. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, member, trustee, employee or

agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise or non profit entity against any liability asserted against and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article SEVENTH or Section 145 of the Delaware General Corporation Law.

F. "The Corporation". For the purposes of this Article SEVENTH, references to "***the Corporation***" shall include the resulting corporation and, to the extent that the Board of Directors of the resulting corporation so decides, all constituent corporations (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers and employees or agents so that any person who is or was a director, officer, employee or agent of such a constituent corporation or is or was serving at the request of such constituent corporation as director, officer, partner, member, trustee, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise or non profit entity shall stand in the same position under the provisions of this Article SEVENTH with respect to the resulting or surviving corporation if its separate existence had continued.

G. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, trustee, partner, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust or other enterprise or non profit entity or from insurance. Nothing in this Article SEVENTH shall limit the power of the Corporation or the Board of Directors to provide rights of indemnification and to make payment of expenses (including attorneys' fees) incurred by an officer to directors, officers, employees, agents, fiduciaries and other persons otherwise than pursuant to this Article SEVENTH.

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

I. Continuation of Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article SEVENTH shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, trustee, partner, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

J. Effect of Amendment or Repeal. The rights to indemnification and advancement of expenses provided in this Article SEVENTH shall be contract rights and shall be deemed to have vested at the time the indemnitee takes the office that entitles such person to such rights, which shall not later be subject to reduction or elimination for acts or omissions occurring prior to such reduction or elimination. Neither the amendment nor repeal of this Article SEVENTH nor the adoption of any provision of these By-Laws inconsistent with this Article SEVENTH shall reduce, eliminate or adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the effectiveness of such amendment, repeal or adoption. If any provision or provisions of this Article SEVENTH shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and

enforceability of the remaining provisions of this Article SEVENTH (including, without limitation, each portion of any paragraph of this Article SEVENTH containing any such provision held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article SEVENTH (including, without limitation, each such portion of any paragraph of this Article SEVENTH containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

EIGHTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized and empowered to make, alter, amend, and repeal the By-Laws. The By-Laws of the Corporation may be amended, altered, changed or repealed, and a provision or provisions inconsistent with the provisions of the By-Laws as they exist from time to time maybe adopted, only by the majority of the entire Board of Directors or with the approval or consent of the holders of not less than a majority, determined in accordance with the provisions of the second paragraph of Section A of Article FOURTH, of the total number of the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors.

NINTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article NINTH.

TENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Restated Certificate (including provisions as may hereafter be added or inserted in this Restated Certificate as authorized by the laws of the State of Delaware) in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other person whomsoever by and pursuant to this Restated Certificate in its present form or as hereafter amended are granted, subject to the rights reserved in this Article TENTH. From time to time any of the provisions of this Restated Certificate may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the Corporation by this Restated Certificate are granted subject to the provisions of this Article TENTH.

4. This Restated Certificate shall become effective at 11:58 pm Eastern Time on December 31, 2011.

* * * * * *

IN WITNESS WHEREOF, American Tower REIT, Inc. has caused this Restated Certificate to be signed by its authorized officer, on this 27 day of December, 2011.

AMERICAN TOWER REIT, INC.

By: _____

Edmund DiSanto
Executive Vice President, Chief Administrative Officer, General Counsel and Secretary

ATTEST:

_____

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Marina.Breed@americantower.com, Ed.DiSanto@AmericanTower.com, ruth.dowling@AmericanTower.com, Michael.McCormack@AmericanTower.com, sanfordlewis@strategiccounsel.net, brittany@rhiaventures.org

February 2, 2023

Re: Rebuttal to No-action Request by American Tower Corporation (AMT)

To Division of Corporate Finance Staff Assigned:

This letter is in response to a January 13, 2023, no-action request by Marina Breed, acting as an agent of American Tower Corporation (the "Company" or “American Tower”). Ms. Breed asserts the shareholder proposal ("Proposal") submitted by my wife, Myra K. Young (Proponent), can be omitted under Rule 14a-8(e)(2). A copy of this response is being sent to Ms. Breed and others listed above.

SUMMARY

The Proposal requests the board amend its bylaws to provide that shareholder approval be required for any advance notice bylaw amendments that require nomination of candidates more than 90 days before the annual meeting, impose new disclosure requirements for director nominees, or require nominating shareholders to disclose limited partners or business associates except to the extent such investors own more than 5% of the company’s shares.

The Company asserts the proposal may be excluded based on a host of exclusions, including its assertion that the Proposal is materially misleading and vague, that it has been substantially implemented, that it violates the limit of one proposal per person, and that it would cause the company to violate Delaware law and potential future federal or state law.

As described below, none of these arguments have merit. First, the language of the Proposal is not materially misleading and is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management. Second, the Company has not substantially implemented the Proposal because neither the essential purpose nor the guidelines of the Proposal have been implemented. Third, the Proposal is being submitted by my wife, Myra K. Young, who is being represented by myself, James McRitchie, and she has properly designated John Chevedden to present the Proposal at the meeting. None of these parties are submitting

more than one Proposal at this Company this proxy season. Fourth, implementation of the Proposal would not require the Company to violate current Delaware law, nor any theoretical future federal or state law.

ANALYSIS

I. The Proposal is not materially misleading or impermissibly vague and indefinite.

The Company asserts the proposal is impermissibly vague, indefinite, and excludable under Rule 14a-8(i)(3). The Company points to at least four parts of the Proposal which it argues inaccurately reflect the Company's bylaws and that it would "inevitably materially mislead shareholders as to what the Bylaws state." To be clear, the Proposal does not misstate any portion of the Bylaws. Instead, the Company argues that the shareholders will infer that the Bylaws state something different than they do. However, no portion of the Proposal is vague or indefinite. The Proposal is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management.

Further, the Company's concern about shareholders being "misled" as to what the Bylaws state is most appropriately addressed through the Company's opposition statement in the proxy. As the Staff explained in Staff Legal Bulletin No. 14B, where the Company "objects to factual assertions that, while not materially false or misleading, may be disputed or countered," the Staff believes that "it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition."

A. The term "shareholder approval" is neither vague nor indefinite and is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management.

The Company argues the term "shareholder approval" is "unclear and confusing" because it could mean "anything between requiring that a certain percentage of the Company's common stock shareholders approve a matter to requiring approval by 100% of the Company's shareholders."

However, the Proposal does not request any new interpretation of the term "shareholder approval." Section 6 of Article III of the Company Bylaws defines the process for voting and achieving a majority vote. The Proposal does not request amendments to this process and, therefore, would follow this same process for the referenced "shareholder approval." "Shareholder approval" is also a commonly understood term among investors, the board, and management.

Shareholders and the Board can reasonably interpret this language both under their understanding of the term "shareholder approval" as well as through reading the Bylaws.

B. The clause "any advance notice bylaw amendments that require nomination of candidates more than 90 days before the annual meeting" is neither vague nor indefinite. Accordingly, it is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management.

The Company argues the clause “90 days before the annual meeting” is misleading because it could refer to the proxy access deadline, which is already more than 90 days before the first anniversary of the previous proxy material release date. However, this misconstrues the plain language of the Proposal. Ninety days before the annual meeting means precisely what it says. Moreover, the request of the Proposal seeks to ensure the Company does not *increase* restrictions on shareholder nominations.

Regardless of the Company’s current timeline for nominations, the Proposal requests that a change to advance notice bylaws, as specified, be made only with shareholder approval. The lack of current restrictions does not prevent future restrictions from being placed without shareholder approval. The proposal aims to prevent inequitable restrictions from being placed on shareholder director nominees.

Lastly, the Company argues that its proxy access deadline is “extremely common among public companies” and that the Proponent is attempting to mislead shareholders as to how common the deadline of 120 to 150 days before the anniversary of the date on which the company released its proxy statement for the previous year’s annual meeting is. However, the Proposal does not state that the deadline is uncommon. Further, the Staff has made clear that where 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,” the appropriate response is for “companies to address these objections in their statements of opposition.”

C. The clause “new disclosure requirements for director nominees, including disclosures related to past and future plans” is neither vague nor indefinite and is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management.

The Company argues that the statement “new disclosure requirements for director nominees, including disclosures related to past and future plans” is misleading for multiple reasons.

First, the Company argues the disclosure requirement could be interpreted as including all information that director nominees are asked to provide to the Company and/or to regulatory agencies. However, this provision of the Proposal requests that the Bylaws be amended to require Shareholder approval “for any advance notice bylaw amendments that: . . . impose new disclosure requirements for director nominees, including disclosures related to past and future plans.” This is *not* mandating specific disclosure. Instead, this is requesting shareholder approval before *amending* disclosure requirements. There is no directive that the Company mandate disclosure differently than the law requires.

Second, the Company argues there is an issue with the Proposal not differentiating requirements for shareholder director nominees and board director nominees. But that is the main point of the Proposal. The goal of the Proposal is to ensure that inequitable disclosure requirements are not placed on shareholder director nominees.

Lastly, the Company argues that the language “past and future plans” is vague and indefinite. However, shareholders, the board, and management can reasonably understand what “past and future plans” mean. Therefore, the language is neither vague nor indefinite.

This is especially true given the Proposal’s explicit reference to controversial and widely discussed advance notice bylaws adopted by the Masimo Corporation that require disclosure of the ownership interests of the nominating shareholder's limited partners, including partners, the nominating shareholder's **past or future plans** to nominate directors at other public companies, and the nominating shareholder's prior communications with fellow shareholders.[1] (Emphasis added)

D. The clause “require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Company’s shares” is neither vague nor indefinite and is subject to reasonable interpretation by shareholders voting on the proposal and by the board and management.

The Company argues first that the term “investors” could refer either to the nominating shareholder or the nominating shareholders’ limited partners or business associates. However, the plain language of the Proposal makes clear that the term investors refers to the nominating shareholders. This is particularly clear in context because any limited partners or business associates may or may not be investors in the company. Regarding 5% holders, it is common knowledge that a Schedule 13D must be filed with the SEC when a person or group acquires more than 5% of a company’s equity shares. This filing must be done within ten days. It must include information about the security and issuer, identity and background, source and amount of funds or other considerations, the purpose of transaction, contracts, arrangements, understandings, etc.

The Company also argues this clause is misleading because it “leads shareholders to believe the Bylaws do not currently require nominating shareholders to disclose limited partners or business associates,” even though the Company states that the Bylaws do require disclosure under certain circumstances. However, the Proposal does not require a change to the current disclosure requirements. Instead, the Proposal requests that shareholder approval be obtained before amendments are made to specified disclosure requirements.

II. The Proposal has not been substantially implemented under Rule 14a-8(i)(10).

In order for the Company to meet its burden of proving substantial implementation pursuant to Rule 14a-8(i)(10), it must show that its activities meet the guidelines and essential purpose of the Proposal. The Staff has noted that a determination that a company has substantially implemented a proposal depends upon whether a company’s particular policies, practices, and procedures compare favorably with the guidelines of the proposal. *Texaco, Inc.* (Mar. 28, 1991). Substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to satisfactorily address both the proposal’s guidelines and its essential objective. See, e.g., *Exelon Corp.* (Feb. 26, 2010).

[1] https://ccrcorp.com/deal-lawyers/articles/advance-notice-bylaws-battlelines-are-drawn-on-amendments-targeting-activists/

The essential purpose of this Proposal is to ensure continued access to the universal proxy by requiring shareholder approval for specific types of amendments to advance notice bylaws. This is clear from the terms of the Proposal: “This resolution simply asks the board to commit not to amend the bylaws to deter legitimate efforts to seek board representation, without submitting such amendments to shareholders.” In addition, the guidelines of this Proposal request an amendment to the Bylaws to formalize the use of this process. Here, the Company has neither satisfied the essential purpose nor followed the guidelines of the Proposal, and thus it has not been substantially implemented.

The Company states that the Proposal is substantially implemented because bylaw amendments may be made “only by the majority of the entire Board of Directors ***or*** with the approval or consent of the holders of not less than a majority” Article XI of the Bylaws (emphasis added). This “or” is critical. Currently, the Board can amend advance notice bylaws to make it more difficult for shareholders to submit nominees. The Proposal requests that shareholder approval be required before the Board can amend these important bylaws beyond those suggested in the Proposal. As noted in the supporting statement, “Although directors have the power to adopt bylaw amendments, shareholders have the power to check that authority by repealing board-adopted bylaws.” The Proposal ensures that that check takes place before unfavorable bylaws are adopted, not after.

The Proposal has not been substantially implemented because the Proposal’s essential purpose and its guidelines have not been implemented.

III. The Proposal does not violate Rule 12a-8(c)’s one proposal per person limit.

As shown in the Company’s exhibits, the relevant events are as follows: On November 27, 2022, Myra K. Young (“Ms. Young”) filed the Proposal with the Company. In her filing letter, she delegated John Chevedden (“Mr. Chevedden”) to act as her agent “regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting.” She retained authority to submit amendments to the Proposal and designated me, James McRitchie, to act as Mr. Chevedden’s “backup.”

On December 8, 2022, the Company sent a deficiency notice stating that, under Rule 14a-8(f), Ms. Young had 14 calendar days from receipt of the deficiency letter to remedy the alleged deficiency caused by Mr. Chevedden’s designation as Ms. Young’s representative despite having already filed his own proposal at the Company. Ms. Young responded on the same day and requested further clarification regarding the alleged deficiency.

The Company wrote back on December 12, 2022, and reiterated its position that, by acting as Ms. Young’s representative, Mr. Chevedden was effectively submitting two proposals. On that same day, Ms. Young answered and revoked “any authority previously delegated to John Chevedden” regarding the Proposal. The Company responded on December 14, 2022, and stated that it would not pursue no-action relief with the SEC “provided that you do not reinstate Mr. Chevedden's authority and that he does not engage as a proponent in advocating for or otherwise influencing your Proposal.”

Ms. Young submitted a response on December 16, 2022, where she reinstated “Mr. Chevedden’s authority to present [her] proposal at the upcoming annual shareholder meeting” and attached a legal memorandum outlining the legal support for this designation. The December 16, 2022, letter also clarifies that I would continue acting as Ms. Young's representative and agent, “including negotiations, amendments, presentation, and any further correspondence.” Therefore, I am the representative for the Proposal, and Mr. Chevedden has the authority only to present the Proposal.

The Company appears to argue that Ms. Young did not remedy the original deficiency because she later narrowly reinstated Mr. Chevedden’s authority to present the Proposal. The Company attempts to refer back to the deficiency notice as proof of a current error. However, Ms. Young properly responded to the Company’s deficiency notice and remedied the deficiency. Any potential concern of Mr. Chevedden submitting multiple proposals through being delegated as Ms. Young’s representative and possibly agreeing to modify the proposal (conceivably interpreted as a submission) during negotiations is quashed in response to the deficiency notice as Ms. Young clearly stated that I have authority to act as her representative and that she revoked “any authority previously delegated to John Chevedden.” Mr. Chevedden submitted only one proposal and is not Ms. Young’s representative.

At present, Mr. Chevedden only has the authority from the Proponent to present her Proposal at the shareholder meeting. The Company attempts to conflate *submission* with *presentation* of the proposal.

However, as reflected in the legal memorandum from the Shareholder Rights Group dated December 15, 2022 (Company’s Exhibit B), the Proponent lawfully has the authority to delegate presentation of the Proposal without conflicting with Rule 14a-8(c). When the SEC amended Rule 14a-8(c) in 2020 to bar a shareholder or representative from *submitting* multiple proposals for the same shareholder meeting, it explicitly did not prevent one person from *presenting* multiple proposals at the same shareholder meeting. The Commission’s background statement in the release of the final 2020 rulemaking stated as follows:

> “Some commenters questioned whether the amendment, which addresses the submission of proposals, would affect a representative’s ability to present proposals on behalf of multiple shareholder-proponents at the same shareholders’ meeting. In order for shareholder proponents who have submitted a proposal for inclusion in a company’s proxy statement to remain eligible to do so at the same company within the following two years, shareholder proponents must appear at the meeting and present their proposal. However, a shareholder proponent may satisfy this requirement by employing a representative who is qualified under state law to present the proposal on the proponent’s behalf. **The amendment is not intended to limit a representative’s ability to present proposals on behalf of multiple shareholders at the same shareholders’ meeting.”** Release No. 34-89964, at page 60, emphasis added.

The Company argues that the Commission's background statements in the release of the final 2020 rule-making "were meant to address scenarios different from the one at hand." The Company argues that the statements were "referring to a scenario where a professional representative is employed to attend a shareholders' meeting and present a shareholder proposal on behalf of more than one shareholder client." No such limitation exists in the Commission's statements. The plain language of the statements makes evident that there is no limitation on one person, like Mr. Chevedden, presenting multiple proposals at the same shareholder meeting. Further reading of the Commission's statements supports Mr. Chevedden's authority:

> "The conduct of shareholder meetings, including how proposals are presented, is generally governed by state law, and does not raise the same concerns that are raised by a proponent's use of a company's proxy statement under the federal proxy rules. We believe that compliance with the substantive eligibility requirements of amended Rule 14a-8(c) will appropriately address the concerns we have with respect to the one-proposal limit, and **we do not believe that the designation of a representative for the purpose of presenting a proposal at the shareholder meeting raises similar concerns**." Release No. 34-89964, at pages 60-61, emphasis added.

The Company's detailed depiction of Mr. Chevedden's, Ms. Young's, and my use of the shareholder proposal process as investors, and the relationship it alleges exists between us is irrelevant to this calculus. Instead, the issue is whether Mr. Chevedden submitted multiple proposals or any proposal on behalf of Ms. Young. Because Ms. Young remedied this potential concern in her response to the Company's deficiency notice, it is clear that Mr. Chevedden is not Ms. Young's representative for the submission or negotiation of this Proposal. Therefore, he did not submit nor is he authorized to submit any proposal on behalf of Ms. Young.

The Company also states: "The list of powers being delegated to Mr. Chevedden constitutes all of the principal powers of a shareholder proposal proponent." This is untrue. Mr. Chevedden has only the limited authority to present the Proposal at the meeting. Pursuant to Rule 14a-8(c) and the Commission's background statement to the 2020 rulemaking, Mr. Chevedden has the authority to present the Proposal without violating the rule.

Because Ms. Young properly corrected the potential procedural deficiency identified in the Company's deficiency notice and Mr. Chevedden has authority under Rule 14a-8(c) and the Commission's clarifying statements to present multiple proposals at the same shareholders meeting, the Proposal is non-excludable under Rule 14a-8(c) or Rule 14a-8(f)(1).

IV. Implementation of the Proposal would not require the Company to violate any federal or state law.

First, the Company argues that the Proposal would require it to violate state law because it would remove the Company's board of directors' ability to amend the Bylaws in certain circumstances when the Certificate of Incorporation gives the Board authority to "make, alter, amend, and repeal the By-Laws." However, the Certificate of Incorporation does not provide

unilateral authority to the Board because it also grants authority to the shareholders to amend the bylaws.

Section 109(a) of the Delaware General Corporation Law ("DGCL") states that "the power to adopt, amend or repeal bylaws shall be in the stockholders entitled to vote" and that while the charter may also extend this power to the board, it may not limit the shareholders' bylaw authority. DGCL 109(a); *see also*, Christopher M. Bruner, *Managing Corporate Federalism: The Least-Bad Approach to the Shareholder Bylaw Debate*, 36 Del. J. Corp. L. 1 (2011).

Section 109(b) states that "bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conduct of its affairs, and its rights or powers or the rights or powers of its stockholders, directors, officers or employees." DGCL § 109(b). Delaware courts have explained that procedural, process-oriented bylaw amendments are appropriate for shareholder-enacted bylaws. *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d at 235 (2008)("purely procedural bylaws do not improperly encroach upon the board's managerial authority under Section 141(a)."). The court explained that bylaws should not mandate decision-making by the board but instead can define the process by which decisions are made.

Examples of procedural bylaw amendments include fixing the number of directors and the vote requirements for board action. *See AFSCME Employees Pension Plans*, 953 A.2d at 235; *see also* DGCL § 141(b). The proposed amendment in the Proposal is procedural because it does not direct the board to make a certain decision and instead regulates the process for future proposed amendments to advance notice bylaws.[2] The Proposal would not violate Delaware law because, under Delaware law, shareholders maintain the unalienable power to make procedural bylaw amendments, such as the proposed amendment in the Proposal.

Second, the Company argues that a portion of the Proposal "may" cause the Company to violate future state or federal law because the disclosures requested could capture "a very broad and uncertain scope of information." However, the disclosure requirements requested by the Proposal function independently of legally required disclosures. There is no reason why the Company cannot comply with both the Proposal disclosure requirements and any current or future theoretical legal disclosure requirements. The purpose of the Proposal is to prohibit the Board from unilaterally creating burdensome disclosure requirements for shareholder nominees. Nothing in the Proposal requires the Company to violate possible future laws.

Further, the Company would not have to get shareholder approval for a legally required amendment because it is highly unlikely that a law would be passed requiring the Company to amend the bylaws. State laws tend to address what bylaw provisions are *permissible,* and neither state nor federal law typically *require* bylaw provisions, except in specific circumstances such as nonprofit organizations.[3]

[2] The discussion of the *AFSCME Employees Pension Plans* case is in reference only to Issue #1 of the case regarding proper shareholder bylaw amendments. Issue #2 regarding the Board's fiduciary duty is not implicated in this situation because there is no expenditure request in the Proposal.

[3] https://www.irs.gov/charities-non-profits/other-non-profits/exempt-organization-bylaws

Finally, the Company may alter other, easier-to-amend corporate governance documents to codify future laws that address disclosure requirements. Alternatively, because the Proposal is advisory and the board retains its discretion, the Company could remedy its concern by including additional language in the bylaw amendment, such as “or as otherwise required by law.” The Board retains full discretion to implement the Proposal as is most appropriate for the Company to both satisfy shareholder concern about advance notice bylaw amendments and to safeguard the Company from apparent uneasiness about potential future regulatory complications. Such discretion remedies the Company’s stated concerns.

Conclusion

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Therefore, companies seeking to establish the availability of exclusion under Rule 14a-8 have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with American Tower on mutually agreeable terms for withdrawing the Proposal. If Staff concurs with the Company's position, we would appreciate an opportunity to confer with Staff concerning this matter before the final determination. You can reach me by emailing [redacted].

Sincerely,

James McRitchie
Shareholder Advocate

March 6, 2023

VIA EMAIL (*shareholderproposals@sec.gov*)

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

Re: Withdrawal of No-Action Request Dated January 13, 2023 Relating to Shareholder Proposal Submitted by Mrs. Myra Young and Mr. James McRitchie

Ladies and Gentlemen:

In a letter dated January 13, 2023 (the "***No-Action Request Letter***"), American Tower Corporation (the "***Company***"), requested that the Staff of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Staff***") concur that a shareholder proposal and statement in support thereof (the "***Proposal***") submitted by Mrs. Myra Young and Mr. James McRitchie (together, the "***Proponents***") may be omitted from the Company's proxy materials for its 2023 annual meeting of shareholders.

Enclosed as Exhibit A is a correspondence between the Proponents and the Company dated March 3, 2023 (the "***Confirmation of Withdrawal***") stating that the Proponents are withdrawing the Shareholder Proposal. In reliance on the Confirmation of Withdrawal, the Company respectfully advises the Staff that it hereby withdraws the No-Action Request Letter.

By copy of this letter, the Company also notifies the Proponents that the Company has received the Confirmation of Withdrawal.

[*Remainder of page intentionally left blank.*]

If you have any questions concerning any aspect of this matter or require any additional information, please feel free to contact me at (617) 585-7770 or marina.breed@americantower.com.

Sincerely,

Marina Breed
Vice President, Corporal Legal

Enclosures

cc:

Francesca Odell, Cleary Gottlieb Steen & Hamilton LLP
Craig Brod, Cleary Gottlieb Steen & Hamilton LLP
Edmund DiSanto
Ruth Dowling
Michael John McCormack
Myra K. Young
James McRitchie
John Chevedden

EXHIBIT A
CONFIRMATION OF WITHDRAWAL

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
cc: Marina.Breed@americantower.com, Ed.DiSanto@AmericanTower.com, ruth.dowling@AmericanTower.com, Michael.McCormack@AmericanTower.com, sanfordlewis@strategiccounsel.net, brittany@rhiaventures.org

March 3, 2023

Re: Withdrawal of Shareholder Proposal at American Tower Corporation (AMT)

To Ms. Breed and Division of Corporate Finance Staff Assigned:

This is to withdraw Myra K. Young's proposal of November 22, 2022, on Fair Elections due to it being poorly worded.

Sincerely,

James McRitchie
Shareholder Advocate

Myra K. Young
AMT Shareholder