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DIVISION OF CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010

March 6, 2009



09038707

Sarah J. Kilgore
Associate General Counsel
The Western Union Company
12500 E Belford Ave., M21A2
Englewood, CO 80112

Received SEC
MAR 06 2009
Washington, DC 20549

Act: 1934
Section:
Rule: 14a-8
Public
Availability: 3-6-09

Re: The Western Union Company
Incoming letter dated January 7, 2009

Dear Ms. Kilgore:

This is in response to your letter dated January 7, 2009 concerning the shareholder proposal submitted to Western Union by John Harrington. We also have received a letter on the proponent's behalf dated January 30, 2009. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Heather L. Maples
Senior Special Counsel

Enclosures

cc: Sanford J. Lewis

March 6, 2009

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: The Western Union Company
Incoming letter dated January 7, 2009

The proposal would amend the bylaws to authorize the board to establish a board committee on public affairs.

There appears to be some basis for your view that Western Union may exclude the proposal under rule 14a-8(i)(7), as relating to Western Union's ordinary business operations. Accordingly, we will not recommend enforcement action to the Commission if Western Union omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Western Union relies.

Sincerely,

Philip Rothenberg
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

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

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

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

SANFORD J. LEWIS, ATTORNEY

January 30, 2009

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

Re: Shareholder Proposal to Western Union Company Seeking a Board Committee on Public Affairs, submitted by Harrington Investments, Inc. on December 5, 2008

Dear Sir/Madam:

Harrington Investments, Inc. (the "Proponent") is the beneficial owner of common stock of the Western Union Company (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. We have been asked by the Proponent to respond to the letter dated January 7, 2009, sent to the Securities and Exchange Commission Staff (the "Staff") by the Company. In that letter, the Company contends that the Proposal may be excluded from the Company's 2009 proxy statement by virtue of Rule 14a-8(i)(10) and Rule 14a-8(i)(7).

We have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the aforementioned Rules, it is our opinion that the Proposal must be included in the Company's 2009 proxy materials and that it is not excludable by virtue of those Rules.

Pursuant to Staff Legal Bulletin 14D, a copy of this letter is being e-mailed concurrently to Sarah Kilgore, Associate General Counsel, the Western Union Company.

The Proposal

For the convenience of the Staff the text of the proposal in its entirety is reprinted here:

RESOLVED: To amend the Bylaws, by inserting at the end of Article III paragraph 8 the following paragraph:

The Board is authorized to establish a Board Committee on Public Affairs. The duties of the Committee may include, among other things, reviewing the company's positions and responsiveness, above and beyond legal compliance, to public policy developments and trends, throughout the industries in which the Company operates, including, but not limited to, public policies relating to consumer privacy and to delivery of our company's services to lower-wage and/or immigrant workers and other classes of valued customers. Nothing herein shall restrict the power of the Board of Directors or management. The Board Committee on Public Affairs shall not incur any costs to the company except as authorized by the Board of Directors.

Statement of Support

Western Union Company has adopted a Directors' Code of Conduct that commits every director, officer and employee of the company to sustain a culture where the highest ethical conduct is the

standard. The Company, however, has in the past been subject to state and federal investigations and paid fines relating to the reporting of “suspicious” money transactions relating to illegal immigration and money laundering.

The proponents of this resolution believe that greater fiduciary oversight is necessary by company directors to monitor and ensure our company’s responsiveness to public policies that may interfere with, limit or restrict our Company’s ability to serve our valuable customers, regardless of socio-economic class, income level or ethnicity.

Analysis

The proposal has not been substantially implemented.

The Company asserts that the proposal is substantially implemented and excludable under rule 14a-8(i)(10) because the existing bylaws already authorize the Board of Directors to establish any committee it chooses. However, in the present case, there is no bylaw provision equivalent to or substantially implementing the provision proposed in this resolution.

The proposed bylaw amendment would formally amend the corporate bylaws and establish parameters for a board committee on public affairs. As such, it would have the effect of providing guidance to the board of directors if the board chooses to establish a committee on public affairs:

The duties of the Committee may include, among other things, reviewing the company’s positions and responsiveness, above and beyond legal compliance, to public policy developments and trends, throughout the industries in which the Company operates, including, but not limited to, public policies relating to consumer privacy and to delivery of our company’s services to lower-wage and/or immigrant workers and other classes of valued customers.

Thus while the creation of the committee is stated in discretionary terms (“The board is authorized to establish”), the purpose of the bylaw amendment is to guide the Board of Directors to govern, at a higher level, a set of social issues facing the Company that would be appropriate for a committee to address. Therefore, the bylaw amendment is significantly different from the existing authorizing language in the bylaws, which merely allows the board of directors to enact a resolution to designate any committee that it chooses and provides no guidance for the creation of such a committee. As such, it is inaccurate to say, as the Company has, that the existing bylaws accomplish the objective of the proposal.

Prior Staff decisions show that if a proposal to amend the bylaws contains any meaningful distinctions to the existing bylaws, the proposed amendment should not be deemed excludable as substantially implemented. For instance, in *Allegheny Energy, Inc.* (February 1, 2007) the proposal requested that the board initiate the appropriate process to amend the company’s governance documents (charter or bylaws) to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders. After receiving the proposal the company amended its bylaws to adopt a bylaw amendment on majority voting with specific terms and conditions that could be understood to be similar to the

proposal. However, the Staff apparently did not concur that the terms of such amendment was sufficient to deem the resolution substantially implemented.

In *Becton, Dickinson and Company* (November 25, 2008) the proposal asked the board to take the steps necessary to amend the bylaws and each appropriate governing document to give holders of 10% of BD's outstanding common stock (or the lowest percentage allowed by law above 10%) the power to call a special shareowner meeting, in compliance with applicable law. The company asserted that an existing statute provides a means by which holders of 10% of the company shareholders might call a special meeting. Thus, the company asserted the shareholders already had the power "in compliance with applicable law" to implement the action asserted in the proposal. However, under the statute, shareholders would have to petition a court, incur the delay associated with petitioning the court, and risk a potential denial of the petition by the court. Therefore there were sufficient distinctions to find that the proposal was not substantially implemented.

In *Bristol-Myers Squibb Company* (February 26, 2007) the proposal sought to amend the company's bylaws to require that the compensation of the chief executive officer must be approved or ratified by at least three-quarters of the company's independent directors. The company had in its existing policies a requirement for approval of executive compensation by a *majority* of independent directors. Accordingly, there was a material difference *i.e.*, the difference between *majority* approval and a *supermajority* approval requirement.

In *CSX Corporation* (March 13, 2008), the proposal would amend the bylaws to require a special meeting to be called at the request of shareholders owning no less than 15% of the issued and outstanding common shares entitled to vote. The shareholders had previously passed by a majority vote at preparatory proposal that the company amend the bylaws to give holders of at least 10% to 25% of the outstanding common stock the power to call a special shareholder meeting. In contrast to the proposed bylaw amendment, the company had proposed a bylaw amendment which would add certain limitations, including timing limitations (only allowing shareholders this power within 12 months after any annual or special meeting of shareholders in which the same matter was included on the agenda) and procedural requirements, which the proponents asserted rendered the bylaw amendment meaningless. The Staff did not concur that the company's proposed bylaw amendment would substantially implement the intent of the shareholder proposed amendment.

Also relevant are the prior decisions of the Staff concluding that where bylaw amendments attempt to establish a formal mechanism for addressing an issue, the existence of informal mechanisms to address the issue are not a basis for finding substantial implementation. *El Paso Corporation* (March 6, 2006), *Hewlett-Packard Company* (January 5, 2006), and *The Home Depot, Inc.* (March 7, 2007).

The essential objective of the proposal in this instance is to encourage the Board of Directors to establish a public affairs committee and to provide parameters and guidance from the shareholders on issues that would be appropriate for such a committee to address. As such it is not substantially implemented.

The resolution is not excludable under the “ordinary business” exclusion.

The Company asserts that the resolution relates to the ordinary business of the Company and is therefore excludable under Rule 14a-8(i)(7). However, the resolution relates to major social policy issues confronting the Company and is therefore not excludable as relating to ordinary business.

The resolution expressly excludes legal compliance matters, and the listing of duties that the committee may oversee focuses on, among other things, **reviewing the Company’s positions and responsiveness, above and beyond legal compliance, to public policy developments and trends, throughout the industries in which the Company operates.** The thrust of the bylaw amendment is to bring greater Board level attention to matters of public affairs. As such its subject matter principally relates to the robustness of the company’s governance structure for addressing the social policy and public affairs environment of the company.

The issues of consumer privacy and delivery of services to lower wage and immigrant workers are presented as examples of the kinds of public affairs issues being raised around the company that the committee would be asked to weigh in on. These reflect major social policy issues facing the company.

For instance, the Company is currently the target of a boycott launched by 158 immigrant advocacy groups. The organizations claim that Western Union’s money-transfer services impose disproportionately high fees on immigrants through their money transfer operation. The problem is increasingly difficult for immigrant families who are expected to provide for family members in their former countries since there are few other money-transfer options available. Western Union has a dominant presence in banks in low-income, predominantly Latino areas, where bank options are limited. The boycott asks that Western Union “lower remittance fees, establish more favorable exchange rates, and provide for community reinvestment.” “Groups Boycott Western Union; Immigrant Advocates say it charges exorbitant fees for money transfers while failing to reinvest in the community” LA Times, September 11, 2007 Immigrants protested high money transfer fees outside a Western Union office in midtown Manhattan on January 16, 2008, believing WU’s high fees specifically target low-income minorities. The protest follows immigrant advocacy groups’ past criticism of Western Union fees. In response, Western Union maintained its “trusted service at competitive prices” mantra, and drew attention to one Western Union charity program. “Immigrants protest against Western Union fees” The Associated Press, January 16, 2008. The boycotting groups are seeking the adoption of a Transnational Community Benefits Agreement (TCBA) and are negotiating with other companies in the money transfer industry. The TCBA asks for community reinvestment, decreased fees, and fairer exchange rates. “Western Union: Stealing So Much More Than Money” La Prensa San Diego, December 28, 2007.

Western Union’s Money transfer operations are also coming under scrutiny by Congress. The House passed a bill enabling credit unions to compete with money-transfers in an attempt to curb terrorism financing. The bill allows credit unions to offer money-transfers and check-cashing services to any potential members. The money-transmittal business suffered after 9/11, with security legislation forcing many banks to eliminate small or medium sized transfers.

Western Union is now the dominant firm, but credit unions could prove to be extremely competitive by charging significantly lower fees. To send \$250 to Mexico by same day delivery, Western Union charges \$14.99 while IRnet, a credit union, charges only \$10. A spokesperson for Western Union stressed their reputation of reliability and experience. “Bill Would Alter Money-Transfer Business- Congress May Help Credit Unions Gain on Western Union, Money Gram in Wiring Funds,” The Wall Street Journal, May 16, 2005.

The company has also been entangled in high profile public policy controversies related to consumer privacy. For instance, the company received negative press when it was reported to be screening against potential terrorists by delaying money orders sent to or from people with names such as Mohammed or Ahmed. The Denver Post, September 11, 2006.

Requests in resolution are at policy level not micromanagement

In contrast to the prior Staff decisions cited by the Company, the present resolution encourages the Company to form a board of directors committee that would address broad public affairs issues not micromanage ordinary business. By contrast the resolutions that the Company cites as excludable in the past related to specific end results sought by proponents. For instance, the Company cites *Bank of America* (February 21, 2006) where the resolution that was found excludable sought to ensure that personal private customer information would remain confidential in all business operations. In contrast to that resolution, the present resolution does not prescribe a specific outcome with regard to customer privacy but only asks for a board committee to engage in monitoring of privacy issues as they relate to existing public policy challenges facing the Company.

The Company also cites *Bank of America* (March 7, 2005) and *Citigroup* (January 8, 1997) where the proposals requested reports on the monitoring of illegal transfers through customer accounts. In contrast to that resolution, the present resolution explicitly excludes issues of legal compliance. In contrast to the cited shareholder proposals that sought to prescribe specific outcomes, the present resolution does not attempt to micromanage the activities of the Company or the board. Instead, the purpose of the resolution is to bring board level review of issues of public affairs. It relates to significant social policy issues, and cannot be related to the ordinary business of the Company; the purpose of the resolution is precisely to ensure that the board is engaged at an adequate level on the many public policy challenges facing the Company- which would not be an issue of ordinary business unless the resolution either micromanaged the board’s activities or required them to do something that related to ordinary business.

Sunoco precedent is not relevant

The Company also attempts to cite the decision in *Sunoco* (February 8, 2008) as an example of how a bylaw to create a board committee on sustainability was deemed to relate to an ordinary business matter. However in that case the Staff explicitly concluded that the bylaw amendment in question invoked the “evaluation of risk” exclusion. The company had argued that it already had a Public Affairs Committee, and that because the proposal would require that issues of sustainability be addressed in a manner “to enhance shareholder value by responding to changing conditions and knowledge of the natural environment,” it related to risk evaluation.

The Staff apparently agreed. In the present instance, there is no assertion by the company that this is an excludable request for risk evaluation.

The bylaw amendment would not address legal compliance

The Company also argues that the resolution addresses ordinary business because it addresses issues of legal compliance. The resolution specifically excludes legal and regulatory compliance matters from the purview of the committee, so this line of argument also fails.

The bylaw amendment does not attempt to impermissibly restructure existing processes

In a final argument the Company asserts that the issues in question are already being addressed elsewhere in the Company and that the proposal involves “restructuring” how it addresses them (e.g. making them a board matter). However the Staff has repeatedly concurred that when a proposal is focused on the creation of a board level committee, it is not sufficient for the company to argue that employees and management are already addressing the issue. *NYNEX Corporation* (February 16, 1994); *NYNEX Corporation* (February 18, 1994); *Associates First Capital Corporation* (March 13, 2000); and *Conseco, Inc.* (April 15, 2001). In these cases, the companies argued that the proposals were moot because executive management and/or employees were addressing the issue or implementing relevant policies. The proponents responded by pointing out that employee and/or management activities are not replacements for steps taken by board members and consequently the proposals have not been substantially implemented. The Staff concurred with the proponents' positions in these cases and concluded the companies could not exclude the proposals. While the Company's managerial steps and adoption of HES policies may be admirable, they are not the equivalent of formalizing public affairs concerns into the bylaws through the creation of a board level committee.

Although decided on the basis of substantial implementation, the Staff decisions cited above conclude that bylaw amendments establishing a formal mechanism for addressing an issue at the board level are not excludable even if there are other mechanisms the Company is using to address the issue. *El Paso Corporation* (March 6, 2006), *Hewlett-Packard Company* (January 5, 2006), and *The Home Depot, Inc.* (March 7, 2007). The proposed bylaw amendment is not seeking to reorganize Company activities in an impermissible way, instead it is seeking to elevate the discourse to board level and ensure that the board fulfills its duty to shareholders to track important public affairs issues facing the Company.

Conclusion

As demonstrated above, the Proposal is not excludable under the asserted rules. Therefore, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no-action request. In the event that the Staff should decide to concur with the Company, we respectfully request an opportunity to confer with the Staff.

Please call me at (413) 549-7333 with respect to any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis". The signature is stylized and cursive.

Sanford Lewis
Attorney at Law

cc: John Harrington, Harrington Investments Inc.
Sarah Kilgore, The Western Union Company, sarah.kilgore@westernunion.com

January 7, 2009

Via Email

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

Re: The Western Union Company - Stockholder Proposal submitted by John Harrington

Ladies and Gentlemen:

This letter is submitted by the Western Union Company, a Delaware corporation ("Western Union" or the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, to notify the staff of the Securities and Exchange Commission (the "Staff") of Western Union's intention to exclude from its proxy materials for its 2009 Annual Meeting of Stockholders (the "Annual Meeting") a stockholder proposal ("the Proposal") submitted by John Harrington (the "Proponent") and received by Western Union on December 8, 2008. The Company requests confirmation that the Staff (the "Staff") of the Division of Corporation Finance will not recommend enforcement action if Western Union excludes the Proposal from its Annual Meeting proxy materials for the reasons set forth below.

The Proposal is a self-executing amendment to the Company's Bylaws that provides, in part, that the "The Board is authorized to establish a Board Committee on Public Affairs." A copy of the correspondence received from the Proponent, including the Proposal and its supporting statement, is attached to this letter as Exhibit A.

Western Union intends to file its definitive proxy materials for the Annual Meeting on or about March 31, 2009. This letter is being submitted via email as contemplated by Staff Legal Bulletin No. 14D. A copy of this letter and its exhibits has been sent to the Proponent.

Discussion

1. The Proposal may be excluded under Rule 14a-8(i)(10) because it has already been substantially implemented.

The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because it has already been substantially implemented by the Company. The Proposal provides for the amendment of the Company's bylaws so that the Board will be "authorized" to establish a committee on public affairs. The existing Company Bylaws, attached to this letter as Exhibit B, already authorize the Board to establish committees, which may include a committee on public affairs.

The “substantially implemented” test was formally announced in Exchange Act Release No. 34-20091, and reflected the Staff’s interpretation of the predecessor rule (allowing omission of a proposal that was “moot”) that a proposal need not be “fully effected” by a company in order to meet the mootness test so long as it was “substantially implemented.” Proposals are considered substantially implemented when a company’s current policies and practices reflect or are consistent with the intent of the proposal. The Staff has consistently taken the position that when a company already has a bylaw in place relating to the subject matter of a shareholder proposal that satisfactorily addresses the underlying concern or essential objective of such proposal, the proposal has been substantially implemented under Rule 14a-8(i)(10). *See Johnson & Johnson* (February 19, 2008) (Staff agreed that a bylaw provision giving holders of at least 25% of the company’s outstanding stock the ability to call a special meeting was substantially implemented with reference to a proposal asking that a “reasonable percentage” of stock have the ability to call a special meeting) and cases cited therein.

Western Union has substantially implemented the Proposal’s demand for the Company bylaws to “authorize the Board to establish a Public Affairs committee.” Specifically, Article III, Section 8 of the Company bylaws (the “Bylaw”) states, “The Board of Directors may, by resolution passed by a majority of the Board of Directors, designate one or more committees, each committee to consist of one or more directors of the Corporation.” The essential objective of the Proposal is to make it possible under the Company Bylaws for the Board to establish a public affairs committee. Although the words of the Bylaw are not precisely those of the Proposal, they accomplish the essential objective of the Proposal by authorizing the same outcome. Put another way, there is no substantive difference between the language of the Bylaw and that of the Proposal.

Accordingly, the Proposal may be omitted from the proxy materials pursuant to Rule 14a-8(i)(10).

2. The Proposal may be excluded under Rule 14a-8(i)(7) because it relates to Western Union’s ordinary business operations.

The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it pertains to matters directly relating to Western Union’s ordinary business operations. Western Union, like most other companies of its size, has an established process to study public policy developments and trends in the industries in which it operates.

In Exchange Act Release No. 34-40018 (May 21, 1998), the Staff explained that the central purpose of the ordinary business exclusion contained in Rule 14a-8(i)(7) is to “confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.”

In determining whether a proposal is excludable under this Rule, the Staff considers two rationales. The first is whether the proposal deals with a matter “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical

matter, be subject to direct shareholder oversight.” See Exchange Act Release No. 34-40018 (May 21, 1998). The second consideration is “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.*

The Company believes that, to the extent that the Proposal has any substantive effect at all, it falls into both of these categories. According to the Proposal, the Public Affairs committee would evaluate “public policy developments throughout the industry in which the Company operates, including, but not limited to public policies relating to consumer privacy and to delivery of our company’s services, to lower-wage and/or immigrant workers and other classes of valued customers.” Such matters fall squarely into categories of ordinary business matters that the Staff have repeatedly permitted companies to exclude.

Consumer privacy practices involve ordinary business matters.

The Staff has, in the past, expressly determined that proposals relating to consumer privacy may be excluded as a matter involving ordinary business operations. In *Bank of America* (February 21, 2006), the Staff permitted Bank of America to exclude a proposal that requested the company’s board to review policies and procedures for ensuring that personal and private customer information would remain confidential in all business operations. See also *Bank of America Corporation* (March 7, 2005) (same) and *Citicorp* (January 8, 1997) (proposal requested board of directors to issue report on policies and procedures to monitor illegal transfers through customer accounts).

The development and implementation of policies and procedures for the protection of customer information is a core management function and an integral part of Western Union’s day-to-day business operations. Western Union is the world’s largest money transfer network, with over [365,000] agents locations in more than 200 countries delivering our services to every corner of the world. The level of privacy provided by Western Union to its customers is fundamental to its service offerings and its ability to attract and retain customers. Furthermore, the laws relating to consumer privacy often vary materially among the hundreds of jurisdictions in which Western Union offers services. Management is in the best position to determine what policies and procedures are necessary to protect customer privacy and ensure compliance with applicable legal and regulatory requirements. To that end, Western Union has developed and maintains technical and operational safeguards designed to comply with applicable legal requirements and ensure that customer information is managed in a way that prevents unlawful access or disclosure. The Proposal impermissibly seeks to subject this integral piece of Western Union business operations to shareholder oversight.

Delivery of services to lower-wage and immigrant workers involves ordinary business matters.

The Staff has repeatedly held that proposals relating to a company’s delivery of services to migrant workers may be excluded because they relate to ordinary business practices. In *Western Union* (March 7, 2007), the Staff permitted the Company to exclude a shareholder proposal from its proxy materials that dealt with very similar operational concerns as those

alluded to in the Proposal; such proposal requested that the Company review its remittance practices on the communities served, compare the Company's fees, exchange rates, and pricing structures with others in the industry and evaluate the Company's community reinvestment and corporate giving practices relative to its competitors. The Staff agreed that such matters involved ordinary business matters of the Company. Similarly, the Staff recently permitted Bank of America to exclude a shareholder proposal calling for an "illegal immigration policy report" that dealt with, among other things, Bank of America's policies and practices regarding the issuance of credit cards and lending to individuals without social security numbers. *See Bank of America* (February 27, 2008).

In *Western Union* (March 7, 2007) as well as *Bank of America*, the subject proposals requested that the respective companies review the manner in which they delivered their services to certain markets or communities of interest, and the Staff agreed that such studies involved matters of ordinary business operations. The outcome should be the same here. The monitoring by Western Union of legal and regulatory developments in the industries in which it operates is a core management function and an integral part of the Company's day-to-day business operations. The Company proactively reviews legal and regulatory developments in order to ensure legal compliance, excel in the marketplace and better enable it to act as a good corporate citizen. Such efforts are highly organized, part of the Company's ordinary business routines, and can involve the engagement of specialized consultants. For example, recognizing that world migratory work patterns could be better understood, the Company engaged the Economist Intelligence Unit ("EIU") to analyze data from 61 nations in order to prepare a global migration report. The report included a consideration of legal impediments, public attitudes, and other factors affecting accessibility to immigrants. Another example of the Company's proactive monitoring of trends affecting its business operations is its commissioning of the EIU to prepare a study of Asian remittances. Further information regarding both projects is available on the Company's website at http://corporate.westernunion.com/global_migration.html.] In summary, the subject matter of the Proposal falls squarely within the Company's ordinary business routines. Like the outcome in *Western Union* (March 7, 2007) and *Bank of America*, the Staff should permit the Company to exclude the Proposal from its proxy materials.

The Proposal's subject matter does not cause it to transcend ordinary business matters.

While the Staff has sometimes not permitted the exclusion of proposals that involve sufficiently significant social policy issues, the Proposal does not meet such criteria. The Proposal authorizes the Board to establish a committee whose duties may include reviewing Company positions and responsiveness to "public policy developments and trends throughout the industries in which the Company operates." The focus of the Proposal is not on a specific public policy issue, but on ensuring that a mechanism exists for the Company to monitor public policy developments in a way that ensures the Company can continue to deliver services to its customers. This distinction separates this Proposal from proposals that specifically involve a specific, cognizable social policy issue that transcend ordinary business matters under the exception.

Furthermore, the Staff has, historically, not simply excepted a proposal from the ordinary exclusion rules because it related to a public policy issue. Instead, the Staff considers proposals on a case-by-case basis, taking into account factors such as the nature of the proposal and the company to which it is directed. *See Cracker Barrel Old Country Store, Inc.* (October 13, 1992) (Staff indicated that the fact that a shareholder proposal regarding employment policies and practices was “tied to a social issue will no longer be viewed as removing the proposal from the realm of ordinary business operations of the registrant.”) Here, the only specific policy grounds implicated by the Proposal—consumer privacy and marketing to immigrants—have not, in the past, been deemed by the Staff to constitute significantly important social issues that transcend ordinary business matters. In *Verizon* (February 27, 2006), the Staff permitted the company to exclude a proposal which called for a report on the technological, legal, and ethical policy issues surrounding the disclosure of customer records and communications content to government agencies and non-governmental entities, and their effect on customer privacy rights. In *Bank of America* (February 27, 2008), the Staff deemed that the alleged marketing of the company’s products to illegal immigrants did not raise a significant social policy issue that transcended ordinary business operations, even though the proponent contended that the proposal was “aimed at the broader policy question of whether BoA is abetting illegal immigration” and noted that “BoA’s plan to issue credit cards to persons with no Social Security numbers prompted extensive media coverage and a firestorm of criticism.” As part of Western Union’s explanation as to why the 2007 proposal referenced above did not raise significant public policy issues, the Company argued, and the Staff apparently agreed, “While the issue of immigration generally has received a considerable amount of attention in the United States in recent years, the transaction fees that immigrants in the United States pay for money transfer services, the exchange rates that apply to those transactions, and the impact of such fees and rates on those immigrants and their families elsewhere in the world are simply not matters that are the topic of current widespread national interest in the United States.” As a result, the proposal was excluded from the Company’s proxy materials under Rule 14a-8(i)(7) as an ordinary business matter, and this Proposal should be excluded as well.

A shareholder proposal to establish a Board committee in these circumstances interferes with the discretion of management.

The Company reiterates its contention that the Proposal would not involve any substantive change from the status quo, in that the Bylaws already authorize creation of a public affairs committee. However, to the extent that the Proposal would facilitate the creation of a new Board committee, such an action would necessarily constitute a significant change in the day-to-day routines of the Company and tend to subject the ordinary business of the Company to shareholder oversight. The shareholders are poorly placed to determine whether a Board committee, management executive or other structure is best situated to consider and evaluate the multitude of trends and policy developments affecting the Company’s business and operations. A review of the Staff’s past decisions suggests that the Staff deems that proposals amending a company’s bylaws to establish a standing board committee can amount to micromanagement by shareholders. For example, in *Sunoco* (February 8, 2008) a proposal amending the company’s bylaws to establish a board committee on sustainability that would “ensure sustained viability”

and "strive to enhance shareholder value by responding to changing conditions and knowledge of the natural environment" was deemed to relate to an ordinary business matter. Accordingly, the Staff agreed that the proposal could be excluded from proxy materials. The Proposal has general similarities to the proposal in *Sunoco*: both proposals involve the establishment of a new board committee; both proposals tangentially involve social policy issues; and both proposals involve an ongoing evaluation of issues, events and competitive risk that could affect competitive success or failure.

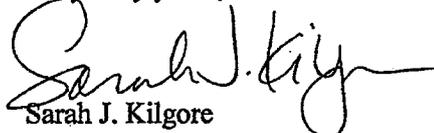
As discussed above, Western Union has an established process to study legal and regulatory developments in the industries in which it operates. A proposal requiring the Company to establish a Board committee for the purpose of restructuring an existing business process constitutes an impermissible subject of shareholder action, and therefore may be omitted pursuant to Rule 14a-8(i)(7).

Conclusion

Based on the foregoing, I request your concurrence that the proposal may be omitted from Western Union's Annual Meeting proxy materials.

Western Union requests that the Staff fax a copy of its determination of this matter to the undersigned at (720) 332-3840 and to the Proponent at (727) 257-7923. If you have questions regarding this request or desire additional information, please contact me at (720) 332-5683.

Very truly yours,


Sarah J. Kilgore
Associate General Counsel

Attachments

EXHIBIT A

Harrington Investments, Inc. Letter
to Western Union
Dated December 5, 2008



December 5, 2008

David L. Schlapbach
Corporate Secretary
The Western Union Company
12500 East Belford Avenue, Englewood
Colorado, 80112

DEC 08 2008

RE: Shareholder Proposal

Dear Mr. Schlapbach,

As a beneficial owner of Western Union Company stock, I am submitting the enclosed shareholder resolution for inclusion in the 2009 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (the "Act"). I am the beneficial owner, as defined in Rule 13d-3 of the Act, of at least \$2,000 in market value of Western Union Company common stock. I have held these securities for more than one year as of the filing date and will continue to hold at least the requisite number of shares for a resolution through the shareholder's meeting. I have enclosed a copy of Proof of Ownership from Charles Schwab & Company. I or a representative will attend the shareholder's meeting to move the resolution as required.

Sincerely,

John Harrington

jwu

encl.

Western Union

COMMITTEE ON PUBLIC AFFAIRS

RESOLVED: To amend the Bylaws, by inserting at the end of Article III paragraph 8 the following paragraph:

The Board is authorized to establish a Board Committee on Public Affairs. The duties of the Committee may include, among other things, reviewing the company's positions and responsiveness, above and beyond legal compliance, to public policy developments and trends, throughout the industries in which the Company operates, including, but not limited to, public policies relating to consumer privacy and to delivery of our company's services to lower-wage and/or immigrant workers and other classes of valued customers. Nothing herein shall restrict the power of the Board of Directors or management. The Board Committee on Public Affairs shall not incur any costs to the company except as authorized by the Board of Directors.

Statement of Support

Western Union Company has adopted a Directors' Code of Conduct that commits every director, officer and employee of the company to sustain a culture where the highest ethical conduct is the standard. The Company, however, has in the past been subject to state and federal investigations and paid fines relating to the reporting of "suspicious" money transactions relating to illegal immigration and money laundering.

The proponents of this resolution believe that greater fiduciary oversight is necessary by company directors to monitor and ensure our company's responsiveness to public policies that may interfere with, limit or restrict our Company's ability to serve our valuable customers, regardless of socio-economic class, income level or ethnicity.



PO Box 52013, Phoenix, AZ 85072-2013

December 5, 2008

David L Schlapbach
Corporate Secretary
The Western Union Company
12500 East Belford Avenue
Englewood, CO 80112

To Whom It May Concern:

RE: **John Harrington**
Western Union Stock Ownership

This letter is to verify that John Harrington has continuously held at least \$2000 in market value of Western Union stock for at least one year prior to December 5, 2008 (December 5, 2007 to present).

If you need additional information to satisfy your requirements, please contact me at 877-615-2386.

Sincerely,

A handwritten signature in black ink, appearing to read "ASA", with a horizontal line extending to the right.

Alisa Scott
Charles Schwab Institutional Service Group

Cc: John Harrington

EXHIBIT B

By-Laws of
The Western Union Company

As approved by the Board of Directors
on December 11, 2008

BY-LAWS
OF
THE WESTERN UNION COMPANY
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation also may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

Section 2. Annual Meetings. The Annual Meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect Directors, and transact such other business as may properly be brought before the meeting. Written notice or, to the extent permitted by law, electronic notice of the Annual Meeting stating the place, date and hour of the meeting, and 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, shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation (including any Certificates of Designation with respect to any Preferred Stock, the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer (iii) the President, if there be one, (iii) the Secretary, (iv) the Chairman of the Governance Committee, or (v) any such officer at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting.

Written notice of a Special Meeting stating the place, 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, and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 4. Quorum. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, all voting shall be conducted in accordance with this Section 5. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote on the subject matter held by such stockholder or such other vote as set forth in the Certificate of Incorporation. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Each director shall be elected by the vote of a majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. However, if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. A majority of votes cast in an election of directors shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker nonvotes" not counted as a vote cast either "for" or "against" that director's election).

If a nominee for director, who is an incumbent director, is not elected, the director shall promptly tender his or her resignation to the Board of Directors. The Corporate Governance Committee, or such other committee designated by the Board of Directors, shall make a recommendation to the Board of Directors as to whether to accept or reject the resignation of

such incumbent director, or whether other action should be taken. The Board of Directors shall act on the resignation, taking into account the committee's recommendation, and publicly disclose (by a press release, a filing with the Securities Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within 90 days following certification of the election results. The director who tenders his or her resignation shall not participate in the recommendation of the committee or the decision of the Board of Directors with respect to his or her resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected or his or her earlier resignation or removal.

If the Board of directors accepts a director's resignation pursuant to this Section 5, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board of Directors may fill the resulting vacancy pursuant to the provisions of Article III, Section 2 or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 1 of these By-Laws.

Section 6. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, the list shall also be open to the examination of any stockholder of the Corporation during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 7. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders.

Section 8. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation of the Corporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 8 and on the record date for the determination of

stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 8.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder or such beneficial owner, (iii) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder or beneficial owner with respect to any share of stock of the Corporation (which information shall be updated by such stockholder and beneficial owner, if any, as of the record date of the meeting not later than 10 days after the record date for the meeting), (iv) a description of all arrangements or understandings between such stockholder or such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to nominate the persons named in its notice and (vi) any other information relating to such stockholder or such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 8. If the Chairman of the annual meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 9. Business at Annual Meetings. No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 9 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 9.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder or such beneficial owner, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder or beneficial owner with respect to any share of stock of the Corporation (which information shall be updated by such stockholder and beneficial owner, if any, as of the record date of the meeting not later than 10 days after the record date for the meeting), (v) a description of all arrangements or understandings between such stockholder or such beneficial

owner and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder or such beneficial owner in such business and (vi) a representation that such stockholder or such beneficial owner intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 9, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 9 shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

ARTICLE III

DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall be fixed from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. The directors shall be divided into three classes, designated Class I, Class II and Class III, as provided in the Certificate of Incorporation. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders. As used in these By-Laws, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

Section 2. Vacancies. Any vacancy on the Board of Directors, including due to newly created directorships resulting from any increase in the authorized number of directors, may only be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual shareholders meeting that is at least 120 days after the appointment of such directors and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 3. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board

of Directors may be called by the Chairman, the Controlling Officer or any directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, electronic mail or in person on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Actions of Board. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, 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 the members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings and electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

Section 8. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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 any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 9. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance

at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 10. Chairman of the Board of Directors. The Board of Directors shall elect from the directors a Chairman of the Board of the Directors at the first meeting of the Board of Directors after each Annual Meeting of stockholders. The Chairman of the Board of Directors shall hold such office until his or her successor is chosen and qualified or until earlier resignation or removal from such position. The Chairman of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall perform such duties and may exercise such powers as from time to time may be assigned to the Chairman by these By-Laws or by the Board of Directors.

ARTICLE IV

OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and there shall be a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chief Executive Officer, President and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by any officer of the Corporation and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chief Executive Officer. At the request of the Chairman of the Board of Directors, or in such person's absence, or in the event of such person's inability or refusal to

act, the Chief Executive Officer, if not also the Chairman of the Board of Directors, and then the President, if there be one, shall perform the duties of the Chairman of the Board of Directors, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board of Directors. The Chief Executive Officer, or in such person's absence, or in the event of such person's inability or refusal to act, the President, if there be one (such person, the "Controlling Officer"), shall, subject to the control of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Controlling Officer shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the Controlling Officer. In the absence or disability of the Chairman of the Board of Directors, the Controlling Officer shall preside at all meetings of the stockholders and the Board of Directors. The Controlling Officer shall also perform such other duties and may exercise such other powers as from time to time may be assigned to such person by these By-Laws or by the Board of Directors.

Section 5. Controlling Officer Succession. At the request of the Controlling Officer, or in such person's absence, or in the event of such person's inability or refusal to act, or if there is no Controlling Officer, the officer designated by the Board of Directors shall perform the duties of the Controlling Officer and when so acting, shall have all the powers of and be subject to all the restrictions upon the Controlling Officer.

Section 6. Secretary. The Secretary, or an Assistant Secretary, shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary, or an Assistant Secretary, also shall perform like duties for the standing committees when required. The Secretary, or an Assistant Secretary, shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors, or the Controlling Officer under whose supervision the Secretary and Assistant Secretaries shall be. If the Secretary and all Assistant Secretaries are unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, then the Board of Directors, the Chairman of the Board of Directors or the Controlling Officer may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 7. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books

belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Controlling Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all such officer's transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 8. Assistant Secretaries. Except as may be otherwise provided in these By-Laws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, the Controlling Officer, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of such person's disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 9. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, Controlling Officer, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of such person's disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

Section 10. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 1. Certificated and Uncertificated Shares. Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of

stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. The certificates shall be signed by (i) the Chairman of the Board of Directors, the Chief Executive Officer, the President or a Vice President and (ii) the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, and certify the number of shares owned by such holder in the Corporation.

Section 2. Signatures. Any signature required to be on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by their attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon the surrender of the certificate.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other corporate action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI

NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex, cable, e-mail or electronic means.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director or member of a committee, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings other Than Those by or in the Right of the Corporation. 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, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action, suit or proceeding by or in the right of the Corporation) by reason of the fact that the person is or was an officer or employee of the Corporation, or is or was an officer or employee of the Corporation serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the defense of such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe the person's 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 the person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had reasonable cause to believe the person's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. 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, suit or proceedings by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was an officer or employee of the Corporation, or is or was an officer or employee of the Corporation serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense of such action, suit or proceedings if the person acted in good faith and in a manner the person 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 action, suit or proceedings, nor 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 or the court in which such action, suit or proceedings 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 or such other court shall deem proper.

Section 3. Prepayment of Expenses. Actual and reasonable expenses (including attorneys' fees) incurred by an officer or employee in defending a civil, criminal, administrative or investigative action, suit or proceeding as contemplated by Sections 1 or 2 of this Article VIII shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the indemnified person to repay

such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 4. Indemnity if Successful on the Merits. The Corporation shall indemnify any present or former officer or employee of the Corporation if such person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 5. Exercise of Powers. Any indemnification under this Article VIII (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 present or former officer or employee is proper in the circumstances because the person has met the applicable standard of conduct set forth in this Article VIII. Such determination shall be made with respect to a person who is an officer at the time of such determination (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by majority vote of the stockholders. The exercise of the power to indemnify and advance expenses by the Corporation pursuant to this Article VIII shall not be deemed to limit any other exercise or restriction of such powers by the Corporation, provided, that any repeal or modification of this Article VIII shall not adversely affect any right or protection of any person in respect to any act or omission occurring prior to the time of such repeal or modification.

Section 6. Indemnification by a Court. Notwithstanding any contrary determination or absence of determination in a specific case under Section 5 of this Article VIII, any officer or employee may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1, 2 and 4 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the officer or employee is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 1, 2 or 4 of this Article VIII, as the case may be. Neither a contrary determination nor the absence of a determination in a specific case under Section 5 of this Article VIII shall be a defense to such application or create a presumption that the officer or employee seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 6 shall be given to the Corporation promptly upon the filing of such application.

Section 7. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an officer or employee and shall inure to the benefit of the heirs, executors and administrators of such a person. No repeal, modification or amendment of, or adoption of any provision inconsistent with, this Article VIII, nor to the fullest extent permitted by applicable law, any modification of law, shall adversely affect any right or protection of any person granted

pursuant hereto existing at, or with respect to, arising out of or related to any event, act or omission that occurred prior to, the time of such repeal, modification, amendment or adoption (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed.)

Section 8. Applicable Law. The rights granted under this Article VIII shall be limited to the extent any applicable laws limit such rights to indemnity or the power to indemnify.

Section 9. Certain Definitions. For purposes of this Article VIII the following definitions shall apply.

“Acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe their conduct was unlawful” shall include, but not be limited to, actions based on the following information from the Corporation or other corporation, partnership, joint venture, trust, employee benefit plan, or enterprise to which the person is or was serving at the request of the Corporation (for purposes of this definition only, an “Enterprise”): records or books of account of the Corporation or Enterprise, information supplied by an officer of the Corporation or Enterprise in the course of their duties, advice of legal counsel for the Corporation or Enterprise, or information or records given or reports made to the Corporation or Enterprise by an independent certified public accountant, appraiser or other expert selected with reasonable care by the Corporation or Enterprise.

“Corporation” shall include, in addition to the resulting corporation, any constituent corporation (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 or employee so that any person who is or was a director, officer or employee of such constituent corporation, or is or was a director, officer or employee of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provision of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

“Fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan.

“Not opposed to the best interest of the corporation” shall include actions taken in good faith in service to an employee benefit plan that the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan.

Section 10. Indemnification of Directors. Directors of the Corporation shall be entitled to indemnification and advancement of expenses as provided in the Certificate of Incorporation.