



DIVISION OF  
CORPORATION FINANCE

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



15005504

n/o Act  
PE 2/13/15

Received SEC  
MAR 05 2015  
Washington, DC 20549

March 5, 2015

Edmund DiSanto  
American Tower Corporation  
ed.disanto@americantower.com

Act: 1934  
Section: \_\_\_\_\_  
Rule: 14a-8 (ODS)  
Public \_\_\_\_\_  
Availability: 3-5-15

Re: American Tower Corporation  
Incoming letter dated January 13, 2015

Dear Mr. DiSanto:

This is in response to your letter dated January 13, 2015 and the letter from Mary E. Alcock dated February 3, 2015 concerning the shareholder proposal submitted to American Tower by Myra K. Young. We also have received a letter on the proponent's behalf dated January 28, 2015. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Special Counsel

Enclosure

cc: John Chevedden

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

March 5, 2015

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: American Tower Corporation  
Incoming letter dated January 13, 2015

The proposal requests that the board undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting.

There appears to be some basis for your view that American Tower may exclude the proposal under rule 14a-8(i)(10). Based on the information you have presented, it appears that American Tower's policies, practices and procedures compare favorably with the guidelines of the proposal and that American Tower has, therefore, substantially implemented the proposal. Accordingly, we will not recommend enforcement action to the Commission if American Tower omits the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Norman von Holtendorff  
Attorney-Advisor

**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 matter 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 shareholders 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.

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RESIDENT COUNSEL

LOUISE M. PARENT  
OF COUNSEL

February 3, 2015

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: American Tower Corporation – Omission of Stockholder Proposal  
Submitted by Ms. Myra K. Young

Ladies and Gentlemen,

We are writing on behalf of our client, American Tower Corporation (the “Company”) in connection with the Company’s request to exclude a stockholder proposal pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). On January 13, 2015, the Company submitted a letter (the “No-Action Request”) to request that no enforcement action be recommended if the Company omits the stockholder proposal (the “Stockholder Proposal”) from Ms. Myra K. Young (the “Proponent”) from the proxy statement and form of proxy (the “2015 Proxy Materials”) for its 2015 Annual Meeting of Stockholders. The No-Action Request and related correspondence with the Proponent is attached to this letter as Exhibit A. On January 28, 2015, Mr. John Chevedden, as representative of the Proponent, submitted a letter (the “Response Letter”) to the staff of the Division of Corporation Finance (the “Staff”) stating that the Company did not obtain an opinion to support the No-Action Request and requesting that the Stockholder Proposal be included in the 2015 Proxy Materials. A copy of the Response Letter is attached as Exhibit B.

An opinion of counsel is not required to support the Company's No-Action Request. Rule 14a-8(j)(2)(iii) under the Exchange Act requires a company to provide a supporting opinion of counsel when the company's reasons for excluding a proposal are based on matters of state or foreign law. Section E of Staff Legal Bulletin No. 14B (Sept. 15, 2004) indicates that a company should provide such a supporting opinion of counsel when proposing to exclude a shareholder proposal on the basis of Rule 14a-8(i)(1) (improper under state law), Rule 14a-8(i)(2) (violation of law) or Rule 14a-8(i)(6) (absence of power or authority). The Company is not asserting any of these bases for exclusion of the Stockholder Proposal, but rather seeks to exclude the Stockholder Proposal from the 2015 Proxy Materials under Rule 14a-8(i)(10) (substantial implementation).

The Company's Amended and Restated By-Laws already provide stockholders with the rights requested by the Proponent—the power to act by written consent to the fullest extent permitted by applicable law:

“[u]nless otherwise restricted by the [Company's Restated] Certificate of Incorporation, any action required or permitted by the [Delaware General Corporation Law] to be taken at any annual or special meeting of the stockholders of the [Company], may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.”

The Company's Restated Certificate of Incorporation does not restrict stockholder action by written consent.

In light of the inapplicability of Rule 14a-8(j)(2)(iii) to the Company's No-Action Request, we respectfully request that the Staff take no action if the Company excludes the Stockholder Proposal from its 2015 Proxy Materials in reliance on Rule 14a-8(i)(10) without submitting an opinion of counsel.

This letter responds to the Response Letter and supplements, and should be read in conjunction with, the No-Action Request. In accordance with Rule 14a-8(j), a copy of this letter and its exhibits is also being sent to the Proponent via her representative. If the Staff has any questions with regard to the foregoing or would like to discuss further, please do not hesitate to contact me at (212) 225-2998.

Very truly yours,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By:

  
Mary E. Alcock, a Counsel

Division of Corporation Finance, p. 3

cc: Edmund DiSanto, Esq.  
Mneesha Nahata, Esq.  
*American Tower Corporation*

Sandra L. Flow, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*

**EXHIBIT A**



January 13, 2015

Via Overnight Delivery  
Via Email to shareholderproposals@sec.gov

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

Re: Securities Exchange Act of 1934, as amended (the "Exchange Act") -  
Omission of Stockholder Proposal Submitted by Ms. Myra K. Young

Ladies and Gentlemen:

American Tower Corporation ("American Tower" or the "Company") has received a stockholder proposal (the "Stockholder Proposal") from Ms. Myra K. Young (the "Proponent"), as represented by Mr. John Chevedden, for inclusion in the Company's proxy statement and form of proxy (the "2015 Proxy Materials") for its 2015 Annual Meeting of Stockholders (the "2015 Annual Meeting"). American Tower intends to omit the Stockholder Proposal from its 2015 Proxy Materials pursuant to Rule 14a-8(i)(10) of the Exchange Act. American Tower respectfully requests the concurrence of the staff of the Division of Corporation Finance (the "Staff") that no enforcement action will be recommended if the Company omits the Stockholder Proposal from the 2015 Proxy Materials.

In accordance with Rule 14a-8(j) of the Exchange Act, the Company has:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before April 6, 2015, the date the Company intends to file its definitive 2015 Proxy Materials with the Commission;
- enclosed herewith six copies of this letter and its attachments; and
- concurrently sent a copy of this correspondence to the Proponent.

By copy of this letter, American Tower notifies the Proponent of the Company's intention to omit the Stockholder Proposal from the 2015 Proxy Materials. American Tower agrees to promptly forward to the Proponent any Staff response to American Tower's no-action request that the Staff transmits to American Tower. Rule 14a-8(k) of the Exchange Act and Question E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Staff with respect to the Stockholder Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) of the Exchange Act and Question E of SLB 14D.

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This letter is being submitted electronically pursuant to Question C of SLB 14D. American Tower is e-mailing this letter, including the Stockholder Proposal and supporting statement, as well as any related correspondence from the Proponent, attached as Exhibit A, to the Staff at shareholderproposals@sec.gov.

### THE PROPOSAL

A copy of the Stockholder Proposal, dated December 2, 2014, supporting statement and ownership verification is attached to this letter as Exhibit A. For the convenience of the Staff, the text of the resolution contained in the Stockholder Proposal is set forth immediately below:

"Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law."

### BASIS FOR EXCLUSION

The Company believes that the Stockholder Proposal may properly be excluded from the 2015 Proxy Materials under Rule 14a-8(i)(10) because Section 228(a) of the Delaware General Corporation Law ("DGCL") and Article III, Section 9 of the Company's Amended and Restated By-Laws (the "By-Laws") already provide stockholders the fullest power to act by written consent consistent with applicable law. A copy of the By-Laws is included in Exhibit B.

### BACKGROUND

The Stockholder Proposal requests that the Company's Board of Directors take steps necessary to give stockholders the fullest power to act by written consent consistent with applicable law.

American Tower is a Delaware corporation. Section 228(a) of the DGCL, provides, in relevant part, that:

"[u]nless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted...."

The Company's Restated Certificate of Incorporation does not restrict stockholder action by written consent. Further, the By-Laws affirmatively permit stockholders to act by written consent. Specifically, Article III, Section 9(a) of the By-Laws provides, in part, that:

"[u]nless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCL to be taken at any annual or special meeting of the stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock ~~having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted....~~"

~~On December 9, 2014, the Company sent a letter to the Proponent, via email, requesting that the Proponent withdraw the Stockholder Proposal because the By Laws already provide the Company's~~

stockholders the rights requested in the Stockholder Proposal (attached as Exhibit B). The Company also included a copy of the By-Laws and cited to the relevant section for the Proponent's reference. As of the date of this letter, the Company has not received a response to its request for withdrawal from the Proponent.

#### ANALYSIS

**The Stockholder Proposal may be excluded under Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.**

Pursuant to Rule 14a-8(i)(10), a company may exclude a proposal from its proxy materials if it has already substantially implemented the proposal. The Commission has indicated that a company does not need to "fully effect" a proposal so long as a company's prior actions address the essential objective and underlying concerns of the proposal. See Exchange Act Release No. 20091 (Aug. 16, 1983) and Exchange Act Release No. 40018 at n.30 (May 21, 1998). See also FirstEnergy Corp. (March 10, 2014); Citigroup Inc. (January 27, 2011); Exxon Mobil Corp. (March 19, 2010); and AMR Corporation (April 17, 2000). In addition, the Staff has also determined that a company's decision not to override state law in its charter documents can constitute substantial implementation. See FirstEnergy Corp. (March 10, 2014) and Exxon Mobil Corp. (March 19, 2010).

The Staff has previously granted no-action relief under Rule 14a-8(i)(10) where a proposal seeking to permit stockholder action by written consent was already substantially implemented pursuant to applicable state law. For example, the Staff granted a no-action letter to Citigroup Inc. dated January 27, 2011 on similar grounds. Citigroup received a stockholder proposal requesting that the board "permit written consent by [stockholders] entitled to cast the minimum number of votes" necessary to authorize the action at a meeting "to the fullest extent permitted by law." Citigroup, also a Delaware corporation, noted that its stockholders were already permitted to act by written consent to the fullest extent permitted by law pursuant to Section 228(a) of the DGCL. In addition, Citigroup's certificate of incorporation did not restrict stockholders' right to act by written consent. As a result, Citigroup's stockholders were able to act by written consent to the fullest extent permitted by law. The Staff granted no-action relief on the basis that the proposal was already substantially implemented pursuant to the DGCL and Citigroup's governing documents did not restrict stockholder action by written consent.

Similarly, on February 2, 2010, the Staff granted a no-action letter to PG&E Corporation concurring with the exclusion of a stockholder proposal that would permit stockholder action by written consent because PG&E's stockholders were already permitted to act by written consent pursuant to state corporate law and the company's bylaws. PG&E, a California corporation, noted that California corporate law permits "holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted" to act by written consent, "unless otherwise provided in the [company's] articles." PG&E's articles did not restrict stockholders' right to act by written consent. Further, PG&E indicated that its bylaws "specifically acknowledged and provided" for stockholder action by written consent, noting that the approval standard is effectively the same as the majority standard set forth in the stockholder proposal because it is the standard permitted by law. The Staff granted no-action relief on this basis because the proposal was already substantially implemented by California corporate law and explicitly provided for in PG&E's bylaws.

There are several other no-action letters involving substantially similar situations where the Staff has concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(10), including: FirstEnergy Corp. (March 10, 2014); Johnson & Johnson (February 10, 2014); Exxon Mobil Corp. (March 19, 2010); and Mattel, Inc. (February 3, 2010).

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Similar to the no-action letters cited above, the Stockholder Proposal has already been substantially implemented by Section 228(a) of the DGCL and Article III, Section 9(a) of American Tower's By-Laws as both permit stockholder action by written consent in a manner consistent with applicable law

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U.S. Securities and Exchange Commission  
January 13, 2015  
Page 4

Accordingly, the Company believes that the Stockholder Proposal may be excluded from the 2015 Proxy Materials under Rule 14a-8(i)(10) of the Exchange Act.

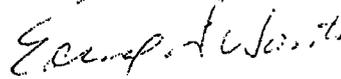
**CONCLUSION**

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Stockholder Proposal from its 2015 Proxy Materials in reliance on Rule 14a-8(i)(10).

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (617) 375-7500 or by email at ed.disanto@americantower.com.

Please send any email correspondence to Mneesha O. Nahata, Vice President, Corporate Legal at mneesha.nahata@americantower.com.

Very truly yours,



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

cc: Mr. John Chevedden, as representative of Ms. Myra K. Young  
Mary Alcock, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*

EXHIBIT A

*See Attached.*



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

December 2, 2014

Mr. Edmund DiSanto  
Corporate Secretary  
American Tower Corporation (AMT)  
116 Huntington Ave 11th Fl  
Boston MA 02116  
PH: 617-585-7738  
PH: 617 375-7500  
FX: 617 375-7575

Dear Corporate Secretary,

I am pleased to be a shareholder in American Tower Corporation (AMT) and appreciate the leadership AMT has shown. However, I believe our company has unrealized potential that can be unlocked through low or no cost corporate governance reform.

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

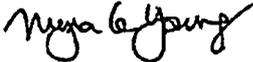
This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\* to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to

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

Sincerely,



Myra K. Young

December 2, 2014

Date

cc: John Chevedden  
cc: Leah C. Stearns <lr@americantower.com>  
Mneesha Nahata <Mneesha.Nahata@AmericanTower.com>

[AMT: Rule 14a-8 Proposal, December 5, 2014]

**Proposal 4 – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle.

A shareholder right to act by written consent is one method to equalize our limited provisions for shareholders to call a special meeting. Delaware law allows 10% of shareholders to call a special meeting without mandating a holding period. However it takes 25% of American Tower shareholders, from only those shareholders with at least one-year of continuously stock ownership, to call a special meeting.

Thus potentially 50% of American Tower shareholders could be disenfranchised from having any voice whatsoever in calling a special meeting due to the American Tower one-year rule. The average holding period for stock is less than one-year according to "Stock Market Investors Have Become Absurdly Impatient."

An added incentive to vote for this proposal is that GMI Ratings, an independent investment research firm, gave American Tower a "Very Aggressive" mark in its Accounting and Governance Risk (AGR) rating. The AGR rating is a comprehensive measure of corporate integrity, based on an extensive evaluation of metrics which study financial results and corporate behavior.

Please vote to protect shareholder value:

**Right to Act by Written Consent – Proposal 4**

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**Notes:**

Myra K. Young, \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\* sponsored this proposal.

**"Proposal 4" is a placeholder for the proposal number assigned by the company in the final proxy.**

Please note that the title of the proposal is part of the proposal.

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(1)(3) in the following circumstances:

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

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

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

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by ~~email~~ FISMA & OMB Memorandum M-07-16 \*\*\*

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AMT		Post-Net Fax Note	7671	Date	12-6-14	# of pages	2
To	Edmund DiSanto		From	John Chvedden			
Co./Dept.			Co.				
Phone #			Phone:	FISMA & OMB Memorandum M-07-16 ***			
Fax #	617-525-7575		Fax #				

12/08/2014

Myra Young

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

Re: Your TD Ameritrade Account Ending In \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least thirteen months 40 shares of American Tower Corporation (AMT) common stock. In the event you wish to transfer these shares to TD Ameritrade, the DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

William Walker  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

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TDA 5380 L 00/13

200 S. 10th Ave.  
Omaha, NE 68154

www.tdameritrade.com

EXHIBIT B

*See Attached.*





December 9, 2014

VIA EMAIL

Ms. Myra K. Young  
c/o Mr. John Chevedden

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

Dear Ms. Young:

I am writing in response to your email dated December 2, 2014, addressed to Edmund DiSanto, Corporate Secretary of American Tower Corporation (the "Company"), regarding a shareholder proposal captioned "Right to Act by Written Consent" (the "Proposal").

The Proposal you have proffered is already addressed by the Company's Amended and Restated By-Laws (the "By-Laws"). Specifically, Article III, Section 9(a) of the By-Law provides in part that "[u]nless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCI, to be taken at any annual or special meeting of the stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitle to vote thereon were present and voted." I have enclosed a copy of the By-Laws for your reference.

Because the By-Laws provide the Company's stockholders the rights requested in the Proposal, the Proposal has already been substantially implemented by the Company. Accordingly, pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act, I respectfully request that you formally withdraw the Proposal from consideration for a vote at the Company's next annual stockholder meeting.

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

Very truly yours,

Mneesha O. Nahata  
Vice President, Corporate Legal

Enclosure

AMENDED AND RESTATED  
BY-LAWS  
OF  
AMERICAN TOWER CORPORATION  
(a Delaware Corporation)

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AMERICAN TOWER CORPORATION  
(a Delaware Corporation)

AMENDED AND RESTATED BY-LAWS  
TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I.	OFFICES .....	1
SECTION 1.	Registered Office.....	1
SECTION 2.	Other Offices .....	1
ARTICLE II.	SEAL .....	1
ARTICLE III.	MEETINGS OF STOCKHOLDERS .....	1
SECTION 1.	Place of Meeting.....	1
SECTION 2.	Annual Meetings.....	1
SECTION 3.	Special Meetings.....	1
SECTION 4.	Notice .....	1
SECTION 5.	Quorum and Adjournments .....	2
SECTION 6.	Votes; Proxies.....	2
SECTION 7.	Organization .....	3
SECTION 8.	Notice of Stockholder Proposal.....	3
SECTION 9.	Consent of Stockholders in Lieu of Meeting.....	4
ARTICLE IV.	DIRECTORS .....	6
SECTION 1.	Number .....	6
SECTION 2.	Term of Office.....	6
SECTION 3.	Vacancies.....	6
SECTION 4.	Removal by Stockholders.....	6
SECTION 5.	Procedure for Nominations by Stockholders.....	6
SECTION 6.	Meetings .....	8
SECTION 7.	Votes.....	8
SECTION 8.	Quorum and Adjournment.....	8
SECTION 9.	Compensation .....	8
SECTION 10.	Action By Consent of Directors .....	9
ARTICLE V.	COMMITTEES OF DIRECTORS.....	9
SECTION 1.	Executive Committee .....	9
SECTION 2.	Audit Committee .....	10
SECTION 3.	Other Committees.....	10
SECTION 4.	Term of Office.....	11
ARTICLE VI.	OFFICERS .....	11
SECTION 1.	Officers.....	11
SECTION 2.	Vacancies.....	11

SECTION 3.	Chairman of the Board .....	11
SECTION 4.	President .....	11
SECTION 5.	Executive Vice Presidents and Vice Presidents.....	11
SECTION 6.	Secretary .....	11
SECTION 7.	Assistant Secretaries .....	12
SECTION 8.	Treasurer .....	12
SECTION 9.	Assistant Treasurers.....	12
SECTION 10.	Controller.....	12
SECTION 11.	Assistant Controller .....	12
SECTION 12.	Subordinate Officers.....	12
SECTION 13.	Compensation .....	12
SECTION 14.	Removal.....	12
SECTION 15.	Bonds .....	12
ARTICLE VII.	CERTIFICATES OF STOCK .....	13
SECTION 1.	Form and Execution of Certificates.....	13
SECTION 2.	Transfer of Shares.....	13
SECTION 3.	Fixing Date for Determination of Stockholders of Record (Other Than For Written Consents) .....	13
SECTION 4.	Lost or Destroyed Certificates .....	14
SECTION 5.	Uncertificated Shares.....	14
ARTICLE VIII.	EXECUTION OF DOCUMENTS .....	14
SECTION 1.	Execution of Checks, Notes, etc.....	14
SECTION 2.	Execution of Contracts, Assignments, etc. ....	14
SECTION 3.	Execution of Proxies.....	14
ARTICLE IX.	INSPECTION OF BOOKS .....	15
ARTICLE X.	FISCAL YEAR.....	15
ARTICLE XI.	AMENDMENTS .....	15

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AMERICAN TOWER CORPORATION  
(a Delaware Corporation)

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AMENDED AND RESTATED BY-LAWS

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ARTICLE I

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OFFICES

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

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

ARTICLE II

SEAL

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

ARTICLE III

MEETINGS OF STOCKHOLDERS

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

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

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

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

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

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

SECTION 5. Quorum and Adjournments. Except as otherwise provided by law or by the Certificate of Incorporation, the presence in person or by proxy at any meeting of stockholders of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote thereat, shall be requisite and shall constitute a quorum. So long as the Certificate of Incorporation provides for more or less than one vote for any share, or any matter, every reference in these By-Laws to a majority or other proportion of shares shall refer to such majority or other proportion of the votes of such shares. If two or more classes of stock are entitled to vote as separate classes upon any question, then, in the case of each such class, a quorum for the consideration of such question shall, except as otherwise provided by law or by the Certificate of Incorporation, consist of a majority in interest of all stock of that class issued, outstanding and entitled to vote. If a majority of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereat or, where a larger quorum is required, such quorum, shall not be represented at any meeting of the stockholders regularly called, the holders of a majority of the shares present or represented by proxy and entitled to vote thereat shall have ~~power to adjourn the meeting to another time, or to another time and place, without notice other than~~ announcement of adjournment at the meeting, and there may be successive adjournments for like cause and in like manner until the requisite amount of shares entitled to vote at such meeting shall be

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represented; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. Subject to the requirements of law and the Certificate of Incorporation, on any issue on which two or more classes of stock are entitled to vote separately, no adjournment shall be taken with respect to any class for which a quorum is present unless the Chairman of the meeting otherwise directs. At any meeting held to consider matters which were subject to adjournment for want of a quorum at which the requisite amount of shares entitled to vote thereat shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Board of Directors may postpone, reschedule or cancel any annual or special meeting of stockholders previously scheduled by the Board of Directors, the Chairman of the Board of Directors, or by the President. The chairman of a meeting of stockholders may adjourn or recess such meeting once convened, whether or not a quorum is present.

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

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

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

Except as otherwise required by law, the Certificate of Incorporation, or these By-Laws, at any meeting at which a quorum is present, all action with respect to matters properly brought before such ~~meeting taken by a majority of the votes properly cast, excluding abstentions and broker non-votes,~~ shall be valid and binding on the Corporation; provided, however, that the Board of Directors shall be elected by a plurality of the votes properly cast if the number of candidates properly nominated for election as

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directors exceeds the number of directors to be elected as of the close of business on the record date for such meeting. For purposes of this Section 6 of this Article, a majority of votes shall mean that the number of votes properly cast "for" an action must exceed the number of votes properly cast "against" such action.

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

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

(b) For any business to be properly brought before a meeting by a stockholder (other than the nomination of a person for election as a director, which is governed exclusively by Section 5 of Article IV of these By-Laws), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120<sup>th</sup>) day and not later than the close of business on the ninetieth (90<sup>th</sup>) day prior to the first anniversary of the previous year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, notice by the stockholder to be timely must be so delivered or mailed and received not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such annual meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. For purposes of the first annual meeting held after January 1, 2012, the anniversary date shall be deemed to be May 18, 2012. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the stockholder proposes to bring before the meeting: (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment; (ii) as to the stockholder of record giving such notice and any beneficial owner on whose behalf such proposal is made, (A) the name and address of such stockholder and beneficial owner, (B) the class and number of shares of stock of the Corporation which are, directly or indirectly, owned of record or beneficially by such stockholder and by such beneficial owner, respectively, and their respective affiliates (naming such affiliates), as of the date of such notice, (C) a description of any agreement,

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arrangement or understanding (including, without limitation, any swap or other derivative or short positions, profit interests, options, hedging transactions, and securities lending or borrowing arrangement) to which such stockholder or beneficial owner and their respective affiliates is, directly or indirectly, a party as of the date of such notice (x) with respect to shares of stock of the Corporation or (y) the effect or intent of which is to mitigate loss to, manage the potential risk or benefit of stock price changes (increases or decreases) for, or increase or decrease the voting power of such stockholder or beneficial owner or any of their affiliates with respect to securities of the Corporation or which may have payments based in whole or in part, directly or indirectly, on the value (or change in value) of any class or series of securities of the Corporation (any agreement, arrangement or understanding of a type described in this clause (C), a "Covered Arrangement"), and (D) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; (iii) a description of any direct or indirect material interest of the stockholder of record and of any beneficial owner on whose behalf the proposal is made, and their respective affiliates, in such business (whether by holdings of securities, by virtue of being a creditor or contractual counterparty of the Company or of a third party, or otherwise), and all agreements, arrangements and understandings between such stockholder and such beneficial owner and their respective affiliates, and any other person or persons (naming such person or persons) in connection with the proposal of such business by the stockholder; (iv) if the stockholder of record or any beneficial owner intends (whether by itself or as part of a group) to solicit proxies in support of such proposal, a representation to that effect; (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder; and (vi) an agreement that the stockholder of record and any related beneficial owner on whose behalf the proposal is made will notify the Corporation in writing of the information set forth in clauses (ii)(B), (ii)(C) and (iii) above as of the record date for the meeting promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update such information thereafter within two business days of any change in such information and, in any event, as of the close of business on the day preceding the meeting date. The foregoing notice requirements of this paragraph (c) of this Section 8 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

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

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

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

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

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

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(d) Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days after the earliest dated written consent received in accordance with this Section 9, a valid written consent or valid written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation in the manner prescribed in this Section 9 and applicable law, and not revoked.

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

#### ARTICLE IV

#### DIRECTORS

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

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

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

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

SECTION 4. Removal by Stockholders. Except as otherwise provided by law, the Certificate of Incorporation or otherwise, the holders of record of the capital stock of the Corporation entitled to vote for the election of directors may, by the affirmative vote of a majority of the outstanding shares entitled to

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vote thereon, remove any director or directors, with or without cause, and, in their discretion, elect a new director or directors in place thereof.

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

(b) To nominate a person for election as a director, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120<sup>th</sup>) day and not later than the close of business on the ninetieth (90<sup>th</sup>) day prior to the first anniversary of the previous year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, notice by the stockholder to be timely must be so delivered or mailed and received not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such annual meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. For purposes of the first annual meeting held after January 1, 2012, the anniversary date shall be deemed to be May 19, 2012. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

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

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of such nominee to being named in the proxy statement as a nominee and to serving as a director if so elected, and (C) a statement tendering, promptly following the stockholder meeting at which such nominee is elected or re-elected as director, an irrevocable resignation that will be effective upon (a) the failure to receive the required vote at the next stockholder meeting at which he or she faces re-election and (b) Board acceptance of such resignation, and (D) all other information relating to such nominee as would have been required to be included in a proxy statement filed in connection with a solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; and (vi) an agreement that the stockholder of record and any related beneficial owner will notify the Corporation in writing of the information set forth in clauses (i)(B), (i)(C), (ii) and (iv) above as of the record date for the meeting promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update such information thereafter within two business days of any change in such information and, in any event, as of close of business on the day preceding the meeting date. The foregoing notice requirements of this paragraph (c) of this Section 5 shall be deemed satisfied by a stockholder with respect to a nomination if the stockholder has notified the Corporation of his, her or its intention to present the nomination at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

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

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

(f) Submission of Questionnaire; Representation and Agreement. To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver (not later than the deadline prescribed for delivery of notice under this Section 5) to the Secretary of the Corporation a written questionnaire, in the form prescribed by the Board of Directors, with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement, in the form prescribed by the Board of Directors, that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director, with such person's duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein; and (iii) in such person's individual capacity and on behalf of any person

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or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director, and will comply with, applicable law and the Corporation's Corporate Governance Guidelines and other policies applicable to directors generally. The foregoing questionnaire and written agreement shall be provided by the Secretary upon written request. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

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

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

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

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

**SECTION 8. Quorum and Adjournment.** Except as otherwise provided by law, the Certificate of Incorporation or otherwise in these By-Laws, a majority of the directors shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than announcement of the adjournment at the meeting, and at such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally noticed.

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

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

## ARTICLE V

### COMMITTEES OF DIRECTORS

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

- (a) Procedure. The Executive Committee shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
  - (b) Responsibilities. During the intervals between the meetings of the Board of Directors, except as otherwise provided by the Board of Directors in establishing such Committee or otherwise, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of the business and affairs of the Corporation; provided, however, that the Executive Committee shall not, except to the extent the Certificate of Incorporation or the resolution providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the DGCL, have the power:
    - (i) to amend or authorize the amendment of the Certificate of Incorporation or these By-Laws;
    - (ii) to authorize the issuance of stock in excess of one million (1,000,000) shares in any single transaction or group of related transactions;
    - (iii) to adopt an agreement of merger or consolidation pursuant to which the Corporation will merge or consolidate or to recommend to the stockholders the sale, lease or exchange of all or substantially all the property and business of the Corporation;
    - (iv) to recommend to the stockholders a dissolution, or a revocation of a dissolution, of the Corporation; or
    - (v) to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.
  - (c) Reports. The Executive Committee shall keep regular minutes of its proceedings, and all ~~action by the Executive Committee shall be reported promptly to the Board of Directors.~~ Such action shall be subject to review, amendment and repeal by the Board, provided that
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no rights of third parties shall be adversely affected by such review, amendment or repeal.

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

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

- (a) Procedure. The Audit Committee, by a vote of a majority of its members, shall fix its own times and places of meeting, shall determine the number of its members constituting a quorum for the transaction of business, and shall prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
- (b) Responsibilities. The Audit Committee shall review the annual financial statements of the Corporation prior to their submission to the Board of Directors, shall consult with the Corporation's independent auditors, and may examine and consider such other matters in relation to the internal and external audit of the Corporation's accounts and in relation to the financial affairs of the Corporation and its accounts, including the selection and retention of independent auditors, as the Audit Committee may, in its discretion, determine to be desirable.
- (c) Reports. The Audit Committee shall keep regular minutes of its proceedings, and all action by the Audit Committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.
- (d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of the Audit Committee, who may replace any absent or disqualified member at any meeting of the Audit Committee. In the absence or disqualification of any member of the Audit Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

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

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- (a) Procedure. Each committee, appointed pursuant to this Section 3, shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
- (b) Responsibilities. Each committee, appointed pursuant to this Section 3, shall exercise the powers assigned to it by the Board of Directors in its discretion.
- (c) Reports. Each committee appointed pursuant to this Section 3 shall keep regular minutes of proceedings, and all action by each such committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.
- (d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of each committee, appointed pursuant to this Section 3, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors (or, to the extent permitted, another person) to act at the meeting in place of any such absent or disqualified member.

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

## ARTICLE VI

### OFFICERS

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

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

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SECTION 3. Chairman of the Board. The Chairman of the Board of Directors, if elected, shall be a member of the Board of Directors and shall preside at its meetings. The Chairman, if other than the

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President, shall advise and counsel with the President, and shall perform such duties as from time to time may be assigned to him or her by the Board of Directors.

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

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

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

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

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

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

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SECTION 10. Controller. The Controller, if elected, shall be the chief accounting officer of the Corporation and shall perform all duties incident to the office of a controller of a corporation, and, in the

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absence of or disability of the Treasurer or any Assistant Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the President or the Treasurer.

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

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

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

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

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

## ARTICLE VII

### CERTIFICATES OF STOCK

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

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**EXHIBIT B**

JOHN CHEVEDDEN

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

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

January 28, 2015

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

**# 1 Rule 14a-8 Proposal**  
**American Tower Corporation (AMT)**  
**Written Consent**  
**Myra K. Young**

Ladies and Gentlemen:

This is in regard to the January 13, 2015 company request concerning this rule 14a-8 proposal.

The company did not obtain an outside opinion to support its claim.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2015 proxy.

Sincerely,

  
John Chevedden

cc: Myra K. Young

Edmund DiSanto <Ed.DiSanto@AmericanTower.com>

**Proposal 4 – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle.

A shareholder right to act by written consent is one method to equalize our limited provisions for shareholders to call a special meeting. Delaware law allows 10% of shareholders to call a special meeting without mandating a holding period. However it takes 25% of American Tower shareholders, from only those shareholders with at least one-year of continuously stock ownership, to call a special meeting.

Thus potentially 50% of American Tower shareholders could be disenfranchised from having any voice whatsoever in calling a special meeting due to the American Tower one-year rule. The average holding period for stock is less than one-year according to “Stock Market Investors Have Become Absurdly Impatient.”

An added incentive to vote for this proposal is that GMI Ratings, an independent investment research firm, gave American Tower a “Very Aggressive” mark in its Accounting and Governance Risk (AGR) rating. The AGR rating is a comprehensive measure of corporate integrity, based on an extensive evaluation of metrics which study financial results and corporate behavior.

Please vote to protect shareholder value:

**Right to Act by Written Consent – Proposal 4**

January 28, 2015

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

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Please vote to protect shareholder value:

**Right to Act by Written Consent – Proposal 4**



**AMERICAN TOWER\***  
CORPORATION

January 13, 2015

Via Overnight Delivery  
Via Email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Securities Exchange Act of 1934, as amended (the "**Exchange Act**") -  
Omission of Stockholder Proposal Submitted by Ms. Myra K. Young

Ladies and Gentlemen:

American Tower Corporation ("**American Tower**" or the "**Company**") has received a stockholder proposal (the "**Stockholder Proposal**") from Ms. Myra K. Young (the "**Proponent**"), as represented by Mr. John Chevedden, for inclusion in the Company's proxy statement and form of proxy (the "**2015 Proxy Materials**") for its 2015 Annual Meeting of Stockholders (the "**2015 Annual Meeting**"). American Tower intends to omit the Stockholder Proposal from its 2015 Proxy Materials pursuant to Rule 14a-8(i)(10) of the Exchange Act. American Tower respectfully requests the concurrence of the staff of the Division of Corporation Finance (the "**Staff**") that no enforcement action will be recommended if the Company omits the Stockholder Proposal from the 2015 Proxy Materials.

In accordance with Rule 14a-8(j) of the Exchange Act, the Company has:

- filed this letter with the Securities and Exchange Commission (the "**Commission**") no later than eighty (80) calendar days before April 6, 2015, the date the Company intends to file its definitive 2015 Proxy Materials with the Commission;
- enclosed herewith six copies of this letter and its attachments; and
- concurrently sent a copy of this correspondence to the Proponent.

By copy of this letter, American Tower notifies the Proponent of the Company's intention to omit the Stockholder Proposal from the 2015 Proxy Materials. American Tower agrees to promptly forward to the Proponent any Staff response to American Tower's no-action request that the Staff transmits to American Tower. Rule 14a-8(k) of the Exchange Act and Question E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Staff with respect to the Stockholder Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) of the Exchange Act and Question E of SLB 14D.

This letter is being submitted electronically pursuant to Question C of SLB 14D. American Tower is e-mailing this letter, including the Stockholder Proposal and supporting statement, as well as any related correspondence from the Proponent, attached as Exhibit A, to the Staff at shareholderproposals@sec.gov.

### THE PROPOSAL

A copy of the Stockholder Proposal, dated December 2, 2014, supporting statement and ownership verification is attached to this letter as Exhibit A. For the convenience of the Staff, the text of the resolution contained in the Stockholder Proposal is set forth immediately below:

"Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law."

### BASIS FOR EXCLUSION

The Company believes that the Stockholder Proposal may properly be excluded from the 2015 Proxy Materials under Rule 14a-8(i)(10) because Section 228(a) of the Delaware General Corporation Law ("DGCL") and Article III, Section 9 of the Company's Amended and Restated By-Laws (the "By-Laws") already provide stockholders the fullest power to act by written consent consistent with applicable law. A copy of the By-Laws is included in Exhibit B.

### BACKGROUND

The Stockholder Proposal requests that the Company's Board of Directors take steps necessary to give stockholders the fullest power to act by written consent consistent with applicable law.

American Tower is a Delaware corporation. Section 228(a) of the DGCL, provides, in relevant part, that:

"[u]nless otherwise provided in the certificate of incorporation, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted...."

The Company's Restated Certificate of Incorporation does not restrict stockholder action by written consent. Further, the By-Laws affirmatively permit stockholders to act by written consent. Specifically, Article III, Section 9(a) of the By-Laws provides, in part, that:

"[u]nless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCL to be taken at any annual or special meeting of the stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted...."

On December 9, 2014, the Company sent a letter to the Proponent, via email, requesting that the Proponent withdraw the Stockholder Proposal because the By-Laws already provide the Company's

stockholders the rights requested in the Stockholder Proposal (attached as Exhibit B). The Company also included a copy of the By-Laws and cited to the relevant section for the Proponent's reference. As of the date of this letter, the Company has not received a response to its request for withdrawal from the Proponent.

#### ANALYSIS

**The Stockholder Proposal may be excluded under Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.**

Pursuant to Rule 14a-8(i)(10), a company may exclude a proposal from its proxy materials if it has already substantially implemented the proposal. The Commission has indicated that a company does not need to "fully effect" a proposal so long as a company's prior actions address the essential objective and underlying concerns of the proposal. See Exchange Act Release No. 20091 (Aug. 16, 1983) and Exchange Act Release No. 40018 at n.30 (May 21, 1998). See also FirstEnergy Corp. (March 10, 2014); Citigroup Inc. (January 27, 2011); Exxon Mobil Corp. (March 19, 2010); and AMR Corporation (April 17, 2000). In addition, the Staff has also determined that a company's decision not to override state law in its charter documents can constitute substantial implementation. See FirstEnergy Corp. (March 10, 2014) and Exxon Mobil Corp. (March 19, 2010).

The Staff has previously granted no-action relief under Rule 14a-8(i)(10) where a proposal seeking to permit stockholder action by written consent was already substantially implemented pursuant to applicable state law. For example, the Staff granted a no-action letter to Citigroup Inc. dated January 27, 2011 on similar grounds. Citigroup received a stockholder proposal requesting that the board "permit written consent by [stockholders] entitled to cast the minimum number of votes" necessary to authorize the action at a meeting "to the fullest extent permitted by law." Citigroup, also a Delaware corporation, noted that its stockholders were already permitted to act by written consent to the fullest extent permitted by law pursuant to Section 228(a) of the DGCL. In addition, Citigroup's certificate of incorporation did not restrict stockholders' right to act by written consent. As a result, Citigroup's stockholders were able to act by written consent to the fullest extent permitted by law. The Staff granted no-action relief on the basis that the proposal was already substantially implemented pursuant to the DGCL and Citigroup's governing documents did not restrict stockholder action by written consent.

Similarly, on February 2, 2010, the Staff granted a no-action letter to PG&E Corporation concurring with the exclusion of a stockholder proposal that would permit stockholder action by written consent because PG&E's stockholders were already permitted to act by written consent pursuant to state corporate law and the company's bylaws. PG&E, a California corporation, noted that California corporate law permits "holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted" to act by written consent, "unless otherwise provided in the [company's] articles." PG&E's articles did not restrict stockholders' right to act by written consent. Further, PG&E indicated that its bylaws "specifically acknowledged and provided" for stockholder action by written consent, noting that the approval standard is effectively the same as the majority standard set forth in the stockholder proposal because it is the standard permitted by law. The Staff granted no-action relief on this basis because the proposal was already substantially implemented by California corporate law and explicitly provided for in PG&E's bylaws.

There are several other no-action letters involving substantially similar situations where the Staff has concurred in the exclusion of a proposal pursuant to Rule 14a-8(i)(10), including: FirstEnergy Corp. (March 10, 2014); Johnson & Johnson (February 10, 2014); Exxon Mobil Corp. (March 19, 2010); and Mattel, Inc. (February 3, 2010).

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Similar to the no-action letters cited above, the Stockholder Proposal has already been substantially implemented by Section 228(a) of the DGCL and Article III, Section 9(a) of American Tower's By-Laws as both permit stockholder action by written consent in a manner consistent with applicable law

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Accordingly, the Company believes that the Stockholder Proposal may be excluded from the 2015 Proxy Materials under Rule 14a-8(i)(10) of the Exchange Act.

**CONCLUSION**

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Stockholder Proposal from its 2015 Proxy Materials in reliance on Rule 14a-8(i)(10).

If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at (617) 375-7500 or by email at [ed.disanto@americantower.com](mailto:ed.disanto@americantower.com).

Please send any email correspondence to Mneesha O. Nahata, Vice President, Corporate Legal at [mneesha.nahata@americantower.com](mailto:mneesha.nahata@americantower.com).

Very truly yours,



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

cc: Mr. John Chevedden, as representative of Ms. Myra K. Young  
Mary Alcock, Esq.  
*Cleary Gottlieb Steen & Hamilton LLP*

EXHIBIT A

*See Attached.*

December 2, 2014

Mr. Edmund DiSanto  
Corporate Secretary  
American Tower Corporation (AMT)  
116 Huntington Ave 11th Fl  
Boston MA 02116  
PH: 617-585-7738  
PH: 617 375-7500  
FX: 617 375-7576

Dear Corporate Secretary,

I am pleased to be a shareholder in American Tower Corporation (AMT) and appreciate the leadership AMT has shown. However, I believe our company has unrealized potential that can be unlocked through low or no cost corporate governance reform.

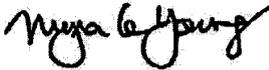
I am submitting a shareholder proposal for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year and I pledge to continue to hold the required amount of stock until after the date of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

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*  
\*\*\*FISMA & OMB Memorandum M-07-16\*\*\* to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*  
\*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

Sincerely,



Myra K. Young

December 2, 2014

Date

cc: John Chevedden  
cc: Leah C. Stearns <[lr@americantower.com](mailto:lr@americantower.com)>  
Mneesha Nahata <[Mneesha.Nahata@AmericanTower.com](mailto:Mneesha.Nahata@AmericanTower.com)>

[AMT: Rule 14a-8 Proposal, December 5, 2014]

**Proposal 4 – Right to Act by Written Consent**

Resolved, Shareholders request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting. This written consent is to be consistent with applicable law and consistent with giving shareholders the fullest power to act by written consent consistent with applicable law. This includes shareholder ability to initiate any topic for written consent consistent with applicable law.

A shareholder right to act by written consent and to call a special meeting are 2 complimentary ways to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle.

A shareholder right to act by written consent is one method to equalize our limited provisions for shareholders to call a special meeting. Delaware law allows 10% of shareholders to call a special meeting without mandating a holding period. However it takes 25% of American Tower shareholders, from only those shareholders with at least one-year of continuously stock ownership, to call a special meeting.

Thus potentially 50% of American Tower shareholders could be disenfranchised from having any voice whatsoever in calling a special meeting due to the American Tower one-year rule. The average holding period for stock is less than one-year according to "Stock Market Investors Have Become Absurdly Impatient."

An added incentive to vote for this proposal is that GMI Ratings, an independent investment research firm, gave American Tower a "Very Aggressive" mark in its Accounting and Governance Risk (AGR) rating. The AGR rating is a comprehensive measure of corporate integrity, based on an extensive evaluation of metrics which study financial results and corporate behavior.

Please vote to protect shareholder value:

**Right to Act by Written Consent – Proposal 4**

Notes:

Myra K. Young, \*\*\*FISMA & OMB Memorandum M-07-16\*\*\* sponsored this proposal.

**"Proposal 4" is a placeholder for the proposal number assigned by the company in the final proxy.**

Please note that the title of the proposal is part of the proposal.

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

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

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

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

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

Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*



AMT Post-It® Fax Note 7671	Date 12-6-14	# of pages 1
To Edmund DiSanto	From John Chivedden	
Co/Dept.	Co.	
Phone #	Phone # ***FISMA & OMB Memorandum M-07-16***	
Fax # 417-325-7575	Fax #	

12/06/2014

Myra Young

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

Re: Your TD Ameritrade Account Ending In \*\*\*FISMA & OMB Memorandum M-07-16\*\*\*

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least thirteen months, 50 shares of American Tower Corporation (AMT) common stock, in her account ending in 10188 at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-869-3900. We're available 24 hours a day, seven days a week.

Sincerely,

William Walker  
Resource Specialist  
TD Ameritrade

This information is furnished as part of a general information service and TD Ameritrade shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD Ameritrade monthly statement, you should rely only on the TD Ameritrade monthly statement as the official record of your TD Ameritrade account.

Market volatility, volume, and system availability may delay account access and trade executions.

TD Ameritrade, Inc., member FINRA/SIPC/NFA ( [www.finc.org](http://www.finc.org), [www.sipc.org](http://www.sipc.org), [www.nfa.futures.org](http://www.nfa.futures.org) ). TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank. © 2013 TD Ameritrade IP Company, Inc. All rights reserved. Used with permission.

TDA 5360 L 09/13

200 S. 103<sup>rd</sup> Ave.  
Omaha, NE 68154

[www.tdameritrade.com](http://www.tdameritrade.com)

**EXHIBIT B**

*See Attached.*



**AMERICAN TOWER\***  
CORPORATION

December 9, 2014

VIA EMAIL

Ms. Myra K. Young  
c/o Mr. John Chevedden

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

Dear Ms. Young:

I am writing in response to your email dated December 2, 2014, addressed to Edmund DiSanto, Corporate Secretary of American Tower Corporation (the "Company"), regarding a shareholder proposal captioned "Right to Act by Written Consent" (the "Proposal").

The Proposal you have proffered is already addressed by the Company's Amended and Restated By-Laws (the "By-Laws"). Specifically, Article III, Section 9(a) of the By-Law provides in part that "[u]nless otherwise restricted by the Certificate of Incorporation, any action required or permitted by the DGCL to be taken at any annual or special meeting of the stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitle to vote thereon were present and voted." I have enclosed a copy of the By-Laws for your reference.

Because the By-Laws provide the Company's stockholders the rights requested in the Proposal, the Proposal has already been substantially implemented by the Company. Accordingly, pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act, I respectfully request that you formally withdraw the Proposal from consideration for a vote at the Company's next annual stockholder meeting.

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

Very truly yours,

Mneesha O. Nahata  
Vice President, Corporate Legal

Enclosure

**AMENDED AND RESTATED  
BY-LAWS  
OF  
AMERICAN TOWER CORPORATION  
(a Delaware Corporation)**

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AMERICAN TOWER CORPORATION  
(a Delaware Corporation)

AMENDED AND RESTATED BY-LAWS  
TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I.	OFFICES .....	1
SECTION 1.	Registered Office.....	1
SECTION 2.	Other Offices .....	1
ARTICLE II.	SEAL .....	1
ARTICLE III.	MEETINGS OF STOCKHOLDERS .....	1
SECTION 1.	Place of Meeting.....	1
SECTION 2.	Annual Meetings.....	1
SECTION 3.	Special Meetings.....	1
SECTION 4.	Notice .....	1
SECTION 5.	Quorum and Adjournments .....	2
SECTION 6.	Votes; Proxies.....	2
SECTION 7.	Organization .....	3
SECTION 8.	Notice of Stockholder Proposal .....	3
SECTION 9.	Consent of Stockholders in Lieu of Meeting.....	4
ARTICLE IV.	DIRECTORS .....	6
SECTION 1.	Number .....	6
SECTION 2.	Term of Office.....	6
SECTION 3.	Vacancies.....	6
SECTION 4.	Removal by Stockholders.....	6
SECTION 5.	Procedure for Nominations by Stockholders .....	6
SECTION 6.	Meetings .....	8
SECTION 7.	Votes.....	8
SECTION 8.	Quorum and Adjournment.....	8
SECTION 9.	Compensation .....	8
SECTION 10.	Action By Consent of Directors .....	9
ARTICLE V.	COMMITTEES OF DIRECTORS .....	9
SECTION 1.	Executive Committee .....	9
SECTION 2.	Audit Committee .....	10
SECTION 3.	Other Committees.....	10
SECTION 4.	Term of Office.....	11
ARTICLE VI.	OFFICERS .....	11
SECTION 1.	Officers.....	11
SECTION 2.	Vacancies.....	11

SECTION 3.	Chairman of the Board .....	11
SECTION 4.	President .....	11
SECTION 5.	Executive Vice Presidents and Vice Presidents.....	11
SECTION 6.	Secretary .....	11
SECTION 7.	Assistant Secretaries .....	12
SECTION 8.	Treasurer.....	12
SECTION 9.	Assistant Treasurers.....	12
SECTION 10.	Controller.....	12
SECTION 11.	Assistant Controller .....	12
SECTION 12.	Subordinate Officers.....	12
SECTION 13.	Compensation .....	12
SECTION 14.	Removal.....	12
SECTION 15.	Bonds.....	12
ARTICLE VII.	CERTIFICATES OF STOCK .....	13
SECTION 1.	Form and Execution of Certificates.....	13
SECTION 2.	Transfer of Shares.....	13
SECTION 3.	Fixing Date for Determination of Stockholders of Record (Other Than For Written Consents) .....	13
SECTION 4.	Lost or Destroyed Certificates.....	14
SECTION 5.	Uncertificated Shares.....	14
ARTICLE VIII.	EXECUTION OF DOCUMENTS .....	14
SECTION 1.	Execution of Checks, Notes, etc.....	14
SECTION 2.	Execution of Contracts, Assignments, etc. ....	14
SECTION 3.	Execution of Proxies.....	14
ARTICLE IX.	INSPECTION OF BOOKS .....	15
ARTICLE X.	FISCAL YEAR.....	15
ARTICLE XI.	AMENDMENTS.....	15

AMERICAN TOWER CORPORATION  
(a Delaware Corporation)

—  
AMENDED AND RESTATED BY-LAWS

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ARTICLE I

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OFFICES

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

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

ARTICLE II

SEAL

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

ARTICLE III

MEETINGS OF STOCKHOLDERS

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

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

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

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

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

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

**SECTION 5. Quorum and Adjournments.** Except as otherwise provided by law or by the Certificate of Incorporation, the presence in person or by proxy at any meeting of stockholders of the holders of a majority of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote thereat, shall be requisite and shall constitute a quorum. So long as the Certificate of Incorporation provides for more or less than one vote for any share, or any matter, every reference in these By-Laws to a majority or other proportion of shares shall refer to such majority or other proportion of the votes of such shares. If two or more classes of stock are entitled to vote as separate classes upon any question, then, in the case of each such class, a quorum for the consideration of such question shall, except as otherwise provided by law or by the Certificate of Incorporation, consist of a majority in interest of all stock of that class issued, outstanding and entitled to vote. If a majority of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereat or, where a larger quorum is required, such quorum, shall not be represented at any meeting of the stockholders regularly called, the holders of a majority of the shares present or represented by proxy and entitled to vote thereat shall have power to adjourn the meeting to another time, or to another time and place, without notice other than announcement of adjournment at the meeting, and there may be successive adjournments for like cause and in like manner until the requisite amount of shares entitled to vote at such meeting shall be

represented; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. Subject to the requirements of law and the Certificate of Incorporation, on any issue on which two or more classes of stock are entitled to vote separately, no adjournment shall be taken with respect to any class for which a quorum is present unless the Chairman of the meeting otherwise directs. At any meeting held to consider matters which were subject to adjournment for want of a quorum at which the requisite amount of shares entitled to vote thereat shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Board of Directors may postpone, reschedule or cancel any annual or special meeting of stockholders previously scheduled by the Board of Directors, the Chairman of the Board of Directors, or by the President. The chairman of a meeting of stockholders may adjourn or recess such meeting once convened, whether or not a quorum is present.

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

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

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

Except as otherwise required by law, the Certificate of Incorporation, or these By-Laws, at any meeting at which a quorum is present, all action with respect to matters properly brought before such ~~meeting taken by a majority of the votes properly cast, excluding abstentions and broker non-votes,~~ shall be valid and binding on the Corporation; provided, however, that the Board of Directors shall be elected ~~by a plurality of the votes properly cast if the number of candidates properly nominated for election as~~

directors exceeds the number of directors to be elected as of the close of business on the record date for such meeting. For purposes of this Section 6 of this Article, a majority of votes shall mean that the number of votes properly cast "for" an action must exceed the number of votes properly cast "against" such action.

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

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

(b) For any business to be properly brought before a meeting by a stockholder (other than the nomination of a person for election as a director, which is governed exclusively by Section 5 of Article IV of these By-Laws), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such business must be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120<sup>th</sup>) day and not later than the close of business on the ninetieth (90<sup>th</sup>) day prior to the first anniversary of the previous year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, notice by the stockholder to be timely must be so delivered or mailed and received not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such annual meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. For purposes of the first annual meeting held after January 1, 2012, the anniversary date shall be deemed to be May 18, 2012. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) A stockholder's notice to the Secretary of the Corporation shall set forth as to each matter the stockholder proposes to bring before the meeting: (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, and in the event that such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment; (ii) as to the stockholder of record giving such notice and any beneficial owner on whose behalf such proposal is made, (A) the name and address of such stockholder and beneficial owner, (B) the class and number of shares of stock of the Corporation which are, directly or indirectly, owned of record or beneficially by such stockholder and by such beneficial owner, respectively, and their respective affiliates (naming such affiliates), as of the date of such notice, (C) a description of any agreement,

arrangement or understanding (including, without limitation, any swap or other derivative or short positions, profit interests, options, hedging transactions, and securities lending or borrowing arrangement) to which such stockholder or beneficial owner and their respective affiliates is, directly or indirectly, a party as of the date of such notice (x) with respect to shares of stock of the Corporation or (y) the effect or intent of which is to mitigate loss to, manage the potential risk or benefit of stock price changes (increases or decreases) for, or increase or decrease the voting power of such stockholder or beneficial owner or any of their affiliates with respect to securities of the Corporation or which may have payments based in whole or in part, directly or indirectly, on the value (or change in value) of any class or series of securities of the Corporation (any agreement, arrangement or understanding of a type described in this clause (C), a "Covered Arrangement"), and (D) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; (iii) a description of any direct or indirect material interest of the stockholder of record and of any beneficial owner on whose behalf the proposal is made, and their respective affiliates, in such business (whether by holdings of securities, by virtue of being a creditor or contractual counterparty of the Company or of a third party, or otherwise), and all agreements, arrangements and understandings between such stockholder and such beneficial owner and their respective affiliates, and any other person or persons (naming such person or persons) in connection with the proposal of such business by the stockholder; (iv) if the stockholder of record or any beneficial owner intends (whether by itself or as part of a group) to solicit proxies in support of such proposal, a representation to that effect; (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder; and (vi) an agreement that the stockholder of record and any related beneficial owner on whose behalf the proposal is made will notify the Corporation in writing of the information set forth in clauses (ii)(B), (ii)(C) and (iii) above as of the record date for the meeting promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update such information thereafter within two business days of any change in such information and, in any event, as of the close of business on the day preceding the meeting date. The foregoing notice requirements of this paragraph (c) of this Section 8 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

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

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

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

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

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

(d) Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days after the earliest dated written consent received in accordance with this Section 9, a valid written consent or valid written consents signed by a sufficient number of stockholders to take such action are delivered to the Corporation in the manner prescribed in this Section 9 and applicable law, and not revoked.

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

#### ARTICLE IV

#### DIRECTORS

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

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

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

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

SECTION 4. Removal by Stockholders. Except as otherwise provided by law, the Certificate of Incorporation or otherwise, the holders of record of the capital stock of the Corporation entitled to vote for the election of directors may, by the affirmative vote of a majority of the outstanding shares entitled to

vote thereon, remove any director or directors, with or without cause, and, in their discretion, elect a new director or directors in place thereof.

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

(b) To nominate a person for election as a director, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation (i) with respect to the regularly scheduled annual meeting of stockholders, not earlier than the one-hundred twentieth (120<sup>th</sup>) day and not later than the close of business on the ninetieth (90<sup>th</sup>) day prior to the first anniversary of the previous year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such first anniversary date, notice by the stockholder to be timely must be so delivered or mailed and received not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such annual meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such annual meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such annual meeting is first made by the Corporation; and (ii) with respect to any other meeting, not earlier than the one-hundred twentieth (120<sup>th</sup>) day prior to the date of such meeting and not later than the close of business on the later of the ninetieth (90<sup>th</sup>) day prior to the date of such meeting or the tenth (10<sup>th</sup>) day following the day on which public disclosure of the date of such meeting is first made by the Corporation. For purposes of the first annual meeting held after January 1, 2012, the anniversary date shall be deemed to be May 19, 2012. In no event shall any adjournment or postponement of a meeting or an announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

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

of such nominee to being named in the proxy statement as a nominee and to serving as a director if so elected, and (C) a statement tendering, promptly following the stockholder meeting at which such nominee is elected or re-elected as director, an irrevocable resignation that will be effective upon (a) the failure to receive the required vote at the next stockholder meeting at which he or she faces re-election and (b) Board acceptance of such resignation, and (D) all other information relating to such nominee as would have been required to be included in a proxy statement filed in connection with a solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; and (vi) an agreement that the stockholder of record and any related beneficial owner will notify the Corporation in writing of the information set forth in clauses (i)(B), (i)(C), (ii) and (iv) above as of the record date for the meeting promptly (and, in any event, within five business days) following the later of the record date or the date notice of the record date is first disclosed by public disclosure, and will update such information thereafter within two business days of any change in such information and, in any event, as of close of business on the day preceding the meeting date. The foregoing notice requirements of this paragraph (c) of this Section 5 shall be deemed satisfied by a stockholder with respect to a nomination if the stockholder has notified the Corporation of his, her or its intention to present the nomination at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's nomination has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

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

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

(f) Submission of Questionnaire; Representation and Agreement. To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver (not later than the deadline prescribed for delivery of notice under this Section 5) to the Secretary of the Corporation a written questionnaire, in the form prescribed by the Board of Directors, with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement, in the form prescribed by the Board of Directors, that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director, with such person's duties under applicable law; (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein; and (iii) in such person's individual capacity and on behalf of any person

or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director, and will comply with, applicable law and the Corporation's Corporate Governance Guidelines and other policies applicable to directors generally. The foregoing questionnaire and written agreement shall be provided by the Secretary upon written request. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

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

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

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

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

**SECTION 8. Quorum and Adjournment.** Except as otherwise provided by law, the Certificate of Incorporation or otherwise in these By-Laws, a majority of the directors shall constitute a quorum for the transaction of business. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice other than announcement of the adjournment at the meeting, and at such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally noticed.

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

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

## ARTICLE V

### COMMITTEES OF DIRECTORS

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

- (a) Procedure. The Executive Committee shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
- (b) Responsibilities. During the intervals between the meetings of the Board of Directors, except as otherwise provided by the Board of Directors in establishing such Committee or otherwise, the Executive Committee shall possess and may exercise all the powers of the Board in the management and direction of the business and affairs of the Corporation; provided, however, that the Executive Committee shall not, except to the extent the Certificate of Incorporation or the resolution providing for the issuance of shares of stock adopted by the Board of Directors as provided in Section 151(a) of the DGCL, have the power:
  - (i) to amend or authorize the amendment of the Certificate of Incorporation or these By-Laws;
  - (ii) to authorize the issuance of stock in excess of one million (1,000,000) shares in any single transaction or group of related transactions;
  - (iii) to adopt an agreement of merger or consolidation pursuant to which the Corporation will merge or consolidate or to recommend to the stockholders the sale, lease or exchange of all or substantially all the property and business of the Corporation;
  - (iv) to recommend to the stockholders a dissolution, or a revocation of a dissolution, of the Corporation; or
  - (v) to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.
- (c) Reports. The Executive Committee shall keep regular minutes of its proceedings, and all action by the Executive Committee shall be reported promptly to the Board of Directors. Such action shall be subject to review, amendment and repeal by the Board, provided that

no rights of third parties shall be adversely affected by such review, amendment or repeal.

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

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

- (a) Procedure. The Audit Committee, by a vote of a majority of its members, shall fix its own times and places of meeting, shall determine the number of its members constituting a quorum for the transaction of business, and shall prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
- (b) Responsibilities. The Audit Committee shall review the annual financial statements of the Corporation prior to their submission to the Board of Directors, shall consult with the Corporation's independent auditors, and may examine and consider such other matters in relation to the internal and external audit of the Corporation's accounts and in relation to the financial affairs of the Corporation and its accounts, including the selection and retention of independent auditors, as the Audit Committee may, in its discretion, determine to be desirable.
- (c) Reports. The Audit Committee shall keep regular minutes of its proceedings, and all action by the Audit Committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.
- (d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of the Audit Committee, who may replace any absent or disqualified member at any meeting of the Audit Committee. In the absence or disqualification of any member of the Audit Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

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

- (a) Procedure. Each committee, appointed pursuant to this Section 3, shall, by a vote of a majority of its members, fix its own times and places of meeting, determine the number of its members constituting a quorum for the transaction of business, and prescribe its own rules of procedure, no change in which shall be made save by a majority vote of its members.
- (b) Responsibilities. Each committee, appointed pursuant to this Section 3, shall exercise the powers assigned to it by the Board of Directors in its discretion.
- (c) Reports. Each committee appointed pursuant to this Section 3 shall keep regular minutes of proceedings, and all action by each such committee shall, from time to time, be reported to the Board of Directors as it shall direct. Such action shall be subject to review, amendment and repeal by the Board, provided that no rights of third parties shall be adversely affected by such review, amendment or repeal.
- (d) Appointment of Additional Members. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of each committee, appointed pursuant to this Section 3, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors (or, to the extent permitted, another person) to act at the meeting in place of any such absent or disqualified member.

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

## ARTICLE VI

### OFFICERS

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

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

SECTION 3. Chairman of the Board. The Chairman of the Board of Directors, if elected, shall be a member of the Board of Directors and shall preside at its meetings. The Chairman, if other than the

President, shall advise and counsel with the President, and shall perform such duties as from time to time may be assigned to him or her by the Board of Directors.

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

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

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

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

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

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

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SECTION 10. Controller. The Controller, if elected, shall be the chief accounting officer of the Corporation and shall perform all duties incident to the office of a controller of a corporation, and, in the

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absence of or disability of the Treasurer or any Assistant Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors shall prescribe or as from time to time may be assigned by the President or the Treasurer.

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

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

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

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

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

## ARTICLE VII

### CERTIFICATES OF STOCK

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

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

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

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

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

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

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

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

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

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

#### ARTICLE VIII

##### EXECUTION OF DOCUMENTS

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

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

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

#### ARTICLE IX

##### INSPECTION OF BOOKS

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

and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

ARTICLE X

FISCAL YEAR

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

ARTICLE XI

AMENDMENTS

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