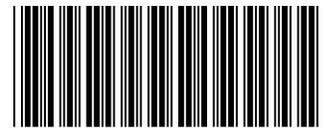




UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549



20170281

DIVISION OF  
CORPORATION FINANCE

June 19, 2017

William L. Hughes  
Fenwick & West LLP  
whughes@fenwick.com

Re: Symantec Corporation

Dear Mr. Hughes:

This is in regard to your letter dated June 13, 2017 concerning the shareholder proposal submitted by James McRitchie for inclusion in Symantec's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal and that Symantec therefore withdraws its May 22, 2017 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Evan S. Jacobson  
Special Counsel

cc: John Chevedden

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

June 13, 2017

WILLIAM HUGHES

E-MAIL WHUGHES@FENWICK.COM  
DIRECT DIAL (415) 875-2479

**BY E-MAIL**

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

Re: Withdrawal of No-Action Request Dated May 22, 2017 Relating to  
Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

We are writing on behalf of our client Symantec Corporation, a Delaware corporation ("*Symantec*"), to inform you that Symantec is formally withdrawing its request, dated May 22, 2017, that the staff of the Securities and Exchange Commission (the "*Commission*") confirm that it would not recommend enforcement action to the Commission if Symantec excludes the proposal submitted to Symantec by James McRitchie (the "*Proxy Access Proposal*") from its proxy card and other proxy materials for its 2017 Annual Meeting of Stockholders. On June 6, 2017, John Chevedden, Mr. McRitchie's designee, withdrew the Proxy Access Proposal by submitting the letter attached hereto as Exhibit A. In reliance on this letter, Symantec hereby withdraws its request.

Please contact me by telephone at (415) 875-2479 or whughes@fenwick.com if you have any questions or would like to discuss this matter further.

Sincerely,



William L. Hughes, Esq.

cc: Scott C. Taylor, Symantec Corporation  
James McRitchie  
John Chevedden

**Exhibit A**

**Withdrawal Letter**

JOHN CHEVEDDEN

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

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

June 6, 2017

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

**# 1 Rule 14a-8 Proposal**  
**Symantec Corp. (SYMC)**  
**Shareholder Proxy Access**  
**James McRitchie**

Ladies and Gentlemen:

This is in regard to the May 22, 2016 no-action request  
This is to withdraw the proposal.

While not ready to agree Symantec's recently adopted bylaws "compare favorably with the guidelines" of the rule 14a-8 proposal, Symantec has made substantial progress in this area. It is especially worth noting that Symantec's bylaws allow up to 50 shareholders to form a nominating group. While this limit is far lower than requested, it is substantially more than the 20-member limit many companies have adopted and that the Council of Institutional Investors has indicated their members cannot meet. By withdrawing this proposal, Mr. McRitchie hopes to send a message to other companies and their boards that he is willing to negotiate.

Sincerely,

  
John Chevedden

cc: James McRitchie

Scott C. Taylor <[Scott\\_Taylor@symantec.com](mailto:Scott_Taylor@symantec.com)>

May 22, 2017

WILLIAM HUGHES

E-MAIL WHUGHES@FENWICK.COM  
DIRECT DIAL (415) 875-2479

**BY E-MAIL**

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

Re: Omission of Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

We are writing on behalf of our client Symantec Corporation, a Delaware corporation (“*Symantec*”), to inform you that Symantec intends to omit from its proxy card and other proxy materials (the “*Proxy Materials*”) for Symantec’s 2017 Annual Meeting of Stockholders (the “*Annual Meeting*”), the following proposal (the “*Proposal*”) submitted to Symantec by James McRitchie (the “*Proponent*”):

RESOLVED: Shareholders of Symantec Corporation (the “Company”) ask the board of directors (the “Board”) to amend its bylaws or other documents, as necessary, to provide proxy access for shareholders, even groups made up entirely of small shareholders, as follows:

1. *Nominating shareholders or shareholder groups (“Nominators”) must beneficially own 3% or more of the Company’s outstanding common stock (“Required Stock”) continuously for at least three years and pledge to hold such stock through the annual meeting.*
2. *Nominators may submit a statement not exceeding 500 words in support of each nominee to be included in the Company proxy.*
3. *The number of shareholder-nominated candidates eligible to appear in proxy materials shall be one quarter of the directors then serving or two, whichever is greater.*
4. *No limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock.*
5. *No limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election.*
6. *The Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees fail to win election.*

7. *Loaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting.*

On behalf of Symantec, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, Symantec requests confirmation that the staff (the “**Staff**”) of the Securities and Exchange Commission (the “**Commission**”) will not recommend enforcement action if Symantec excludes the Proposal from its Proxy Materials for the reasons discussed below. The Annual Meeting is scheduled for October 5, 2017, and Symantec currently expects that it will file definitive copies of the Proxy Materials with the Commission on or around August 16, 2017. Pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before Symantec files its definitive copies of the Proxy Materials with the Commission.

Copies of the letter from the Proponent to Symantec submitting the Proposal, the supporting statement and related correspondence are attached as Exhibit A to this letter.

Pursuant to Rule 14a-8(j) and *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) (“**SLB 14D**”), we have submitted this letter, together with the Proposal, to the Staff via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov) in lieu of mailing paper copies. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently via e-mail to [Scott\\_Taylor@symantec.com](mailto:Scott_Taylor@symantec.com) pursuant to Rule 14a-8(k) and SLB 14D.

## **REASON FOR EXCLUSION OF PROPOSAL**

We believe that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10) because Symantec has substantially implemented the Proposal.

Under Part II, Item 9B of its annual report on Form 10-K filed with the Commission on May 19, 2017, Symantec announced that its board of directors had adopted an amendment to its bylaws (the “**Syantec Bylaws**”), effective May 17, 2017 (the “**Bylaw Amendment**”) allowing for stockholders to directly nominate candidates to the board of directors. As described below, Article I, Section 1.13 was added to the Symantec Bylaws to permit a stockholder or a group of up to 50 stockholders, who have owned at least 3% of Symantec’s outstanding common stock continuously for at least three years, to nominate and include in Symantec’s proxy materials director nominees constituting up to the greater of two individuals or 20% of the total number of Symantec’s directors serving as of the proxy access nomination deadline. See Exhibit B.

The Proposal, in its supporting statement, states that “[a]doption of bylaws with *all* the requested elements outlined above would help ensure meaningful proxy access [sic] is available to shareholders. . . .” We believe that this essential objective of the Proposal – meaningful proxy access – is satisfied by the Bylaw Amendment. As such, Symantec believes that excluding the Proposal from its Proxy Materials is proper under Rule 14a-8(i)(10) because Symantec has substantially implemented the Proposal by adopting the Bylaw Amendment.

### **Rule 14a-8(i)(10)**

Rule 14a-8(i)(10) allows a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Staff’s interpretation of the rule acknowledges that “substantial” implementation of a proposal under the rule does not require implementation in full or exactly as presented. *See Commission Release No. 34-40018* (May 21, 1998, n. 30). Instead, the question of whether a company “has substantially implemented” a shareholder proposal turns on whether the adopted “policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991). The Staff has issued no-action letters in situations where the essential objective of the proposal – as opposed to its exact details – has been satisfied. *See, e.g., General Motors Corp.* (Mar. 4, 1996). In addition, the Staff has found substantial implementation when a company addresses aspects of implementation in which a proposal is silent or which differ from the manner in which the shareholder proponent would implement the proposal. *See, e.g., Bank of America Corp.* (Dec. 15, 2010) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board amend the company’s governing documents to give holders of 10% of the company’s stock the power to call a special meeting, where the board had adopted a bylaw giving holders of at least 10% of the company’s stock to call a special meeting but imposed additional informational and other requirements not outlined in the proposal); *Hewlett-Packard Co.* (Dec. 11, 2007) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board permit stockholders to call special meetings where the company proposed a bylaw amendment to permit stockholders to call a special meeting unless the board determined that the business to be addressed at such special meeting had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (Feb. 17, 2006) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting the company to verify employment legitimacy because the company was already required to do so under U.S. law). The Staff has also determined that a bylaw amendment has satisfied the essential objective of a proposal, and therefore been substantially implemented, despite the fact that the bylaw amendment addressed issues that the shareholder proposal either did not address, or that the proposal addressed in a different way. *See, e.g., AGL Resources, Inc.* (Mar. 5, 2015) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board amend its governing documents to give holders of 25% of the company’s common stock the power to call special meetings where the board adopted a bylaw amendment, subject to stockholder approval, providing holders of 25% of the company’s common stock in a net long position for at least one year the power to call a special meeting); *General Dynamics Corp.* (Feb. 6, 2009) (concurring with the exclusion under

Rule 14a-8(i)(10) of a special meeting proposal with a 10% ownership threshold, where the company had adopted a special meeting bylaw with an ownership threshold of 10% for special meetings called by one stockholder and 25% for special meetings called by a group of stockholders); *Chevron Corp.* (Feb. 19, 2008) (concurring with the exclusion under Rule 14a-8(i)(10) of a special meeting proposal requesting that “holders of 10% to 25%” of the company’s outstanding common stock be given such power where the company had adopted a provision allowing holders of 25% of the company’s outstanding stock to call a special meeting).

More specifically, the Staff has determined that a similar or substantially identical shareholder proposal submitted to numerous other companies could be excluded under Rule 14a-8(i)(10) because in each case the company had adopted proxy access bylaws that “addressed the proposal’s essential objective.” See, e.g., *OGE Energy Corp.* (Feb. 24, 2017); *Comcast Corporation* (Feb. 15, 2017); *Valley Nat’l Bancorp* (Dec. 19, 2016) *Danaher Corp.* (Dec. 19, 2016); *Berry Plastics Group* (Dec. 14, 2016); *Cisco Systems, Inc.* (Sept. 27, 2016); *WD-40 Co.* (Sept. 27, 2016); *Oracle Corporation* (Aug. 11, 2016); *Cardinal Health, Inc.* (July 20, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *Omnicom Group Inc.* (Mar. 22, 2016); *General Motors Co.* (Mar. 21, 2016); *Quest Diagnostics Inc.* (Mar. 17, 2016); *Chemed Corp.* (Mar. 9, 2016); *Eastman Chemical Co.* (Mar. 9, 2016); *Newell Rubbermaid, Inc.* (Mar. 9, 2016); *Amazon.com, Inc.* (Mar. 3, 2016); *Anthem, Inc.* (Mar. 3, 2016); *Fluor Corp.* (Mar. 3, 2016); *International Paper Co.* (Mar. 3, 2016); *ITT Corp.* (Mar. 3, 2016); *McGraw Hill Financial, Inc.* (Mar. 3, 2016); *PG&E Corp.* (Mar. 3, 2016); *Public Service Enterprise Group Inc.* (Mar. 3, 2016); *Sempra Energy* (Mar. 3, 2016); *Xylem Inc.* (Mar. 3, 2016); *The Wendy’s Co.* (Mar. 2, 2016); *Reliance Steel & Aluminum Co.* (Feb. 26, 2016); *United Continental Holdings, Inc.* (Feb. 26, 2016); *Alaska Air Group, Inc.* (Feb. 12, 2016); *Baxter Int’l Inc.* (Feb. 12, 2016); *Capital One Financial Corp.* (Feb. 12, 2016); *Cognizant Technology Solutions Corp.* (Feb. 12, 2016); *The Dun & Bradstreet Corp.* (Feb. 12, 2016); *General Dynamics Corp.* (Feb. 12, 2016); *Huntington Ingalls Industries, Inc.* (Feb. 12, 2016); *Illinois Tool Works, Inc.* (Feb. 12, 2016); *Northrop Grumman Corp.* (Feb. 12, 2016); *PPG Industries, Inc.* (Feb. 12, 2016); *Science Applications Int’l Corp.* (Feb. 12, 2016); *Target Corp.* (Feb. 12, 2016); *Time Warner Inc.* (Feb. 12, 2016); *UnitedHealth Group Inc.* (Feb. 12, 2016); and *The Western Union Co.* (Feb. 12, 2016) (collectively, the “**Proxy Access No-Action Letters**”). In *Comcast Corporation*, the Staff recently concurred with the exclusion of a shareholder proposal substantially similar to the Proposal where the company had already adopted proxy access bylaw amendments nearly identical to the Bylaw Amendment. In order to nominate candidates to the board of directors, the proposal required that, among other things, a stockholder or a group of stockholders (of unlimited size) own 3% or more of the company’s outstanding common stock continuously for at least three years and that such nominees should not exceed the greater of two directors or 25% of the board of directors then serving. The Staff allowed the exclusion of this proposal even though the bylaw adopted by the company included a 20% cap on such nominees and imposed a 20-stockholder limit on the size of the group that could aggregate shares to establish the 3% ownership threshold. In particular, the Staff confirmed that there appeared to be some basis for that company’s view that the proposal may be excluded under Rule 14a-8 (i)(10), noting that

company's representation that "the board ha[d] adopted a proxy access bylaw that addresses the proposal's essential objective."

The Staff has not always concurred with exclusion under Rule 14a-8(i)(10) of proxy access proposals under similar circumstances. In those few instances where the Staff has declined to provide no-action relief under Rule 14a-8(i)(10) with respect to such proxy access proposals, the ownership threshold percentage differed between the bylaw adopted by the company (5%) and percentage requested in the proposal (3%). See *Flowserve Corp.* (Feb. 12, 2016); *NVR, Inc.* (Feb. 12, 2016) (no-action request granted upon reconsideration on March 25, 2016, following the company's amendment of the ownership threshold in its proxy access provision to 3%); and *SBA Communications Corp.* (Feb. 12, 2016). As discussed below, the Bylaw Amendment and the Proposal do not differ in respect of the required ownership threshold percentage. Additionally, in several other instances the Staff did not concur with the exclusion under Rule 14a-8(i)(10) for proposals seeking the amendment of an *existing* proxy access bylaw. See, e.g., *Fiserv, Inc.* (Feb. 10, 2017); *Whole Foods Market, Inc.* (Nov. 3, 2016); and *H&R Block, Inc.* (Jul. 21, 2016). Symantec, as was the case in each of the Proxy Access No-Action Letters, had not previously adopted a proxy access bylaw at the time that the shareholder proposal to adopt proxy access was submitted, which we believe is a key distinguishing characteristic from those other letters.

**The Board of Directors' Adoption of the Bylaw Amendment Substantially Implements the Essential Objective of the Proposal by Offering Meaningful Proxy Access to Stockholders**

The comparison below demonstrates that the terms of the Bylaw Amendment "compare favorably with the guidelines of" the Proposal and address the essential objective of the Proposal, and therefore substantially implement the Proposal within the meaning of established precedent under Rule 14a-8(i)(10).

***Ownership Threshold***

*The Proposal.* The Proposal requires that "nominating shareholders or shareholder groups" (defined in the Proposal as "Nominators") must "beneficially own 3% or more of the Company's outstanding common stock... continuously for at least three years" before submitting the nomination and "pledge to hold such stock through the annual meeting." The Proposal further states that "[l]oaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes."

*The Bylaw Amendment.* Article I, Sections 1.13(c)(ii)-(iii) of the Bylaw Amendment require that a Nominating Stockholder (as defined in Article I, Section 1.13(a) thereof) beneficially own at least 3% of Symantec's outstanding common stock, including, as specified in Article I, Section 1.13(c)(iv), loaned stock recallable on five business days' notice. Article I,

Section 1.13(c)(i) requires the Nominating Stockholder have continuous ownership of those shares for at least three years prior to submitting the nomination and Article I, Section 1.13(d)(ii)(g) of the Bylaw Amendment requires the Nominating Stockholder to represent and warrant that such Nominating Stockholder “intends to continue to satisfy the eligibility requirements...through the date of the annual meeting.”

Article I, Sections 1.13(c)(i)-(iv) of the Bylaw Amendment meet the intent of the Proposal that the Nominators must have beneficially owned 3% or more of Symantec’s outstanding common stock, including loaned callable stock, for at least three years. Based on our review, the requirement that the loaned stock be callable within five business days’ notice has not impacted the Staff’s prior analysis under Rule 14a-8(i)(10) with respect to proxy access shareholder proposals. *See, e.g., OGE Energy Corp.* (finding that a five business day requirement substantially implemented the shareholder proposal); *Comcast Corporation* (same); *Valley Nat’l Bancorp* (same); *Cisco Systems, Inc.* (same); *PG&E Corp.* (same); *Target Corp.* (finding that a three business day requirement also substantially implemented the shareholder proposal). Accordingly, we believe the Bylaw Amendment substantially implements this aspect of the Proposal.

#### ***Number of Nominees***

*The Proposal.* The Proposal states that “the number of shareholder-nominated candidates . . . shall be one quarter of the directors then serving or two, whichever is greater.”

*The Bylaw Amendment.* Article I, Section 1.13(b)(i) of the Bylaw Amendment states that Symantec shall not be required to include in the proxy statement for an annual meeting of stockholders more nominees than that number of directors constituting the greater of two or 20% of the total number of directors serving as of the proxy access nomination deadline, rounded down to the nearest whole number (the “***Maximum Number***”).

While these provisions of the Bylaw Amendment and the Proposal differ slightly in that the Proposal references “one quarter of the directors then serving or two, whichever is greater” and the Bylaw Amendment provides for “the greater of two or 20%,” both provisions would allow for no fewer than two nominees, which Symantec believes is the key aspect of this limitation. As noted above, for a company to substantially implement a shareholder proposal, it is not necessary that the company implement every provision in full or exactly as presented as long as the variations do not undermine the “essential objective” of the proposal. Symantec believes the Bylaw Amendment’s limitation of the nominees to the Maximum Number compares favorably with the guidelines suggested in the Proposal in that at least two candidates may be nominated by stockholders, and does not undermine the Proposal’s essential objective of providing “meaningful proxy access.” Further, the Bylaw Amendment limiting nominees to the greater of two or 20% of the board of directors is identical to the limitations of other companies that the Staff has found to have substantially implemented proxy access in their respective

bylaws. *See, e.g., OGE Energy Corp.; Comcast Corporation; Valley Nat'l Bancorp; Danaher Corp.; Berry Plastics Group; Cisco Systems, Inc; WD-40 Co.; Leidos Holdings, Inc.; PG&E Corp.; and Target Corp.*

### ***Aggregation of Stockholders as the Nominating Stockholders***

*The Proposal.* The Proposal states that “[n]o limitation shall be placed on the number of shareholders that can aggregate their shares” for the purposes of satisfying the ownership threshold for nominations.

*The Bylaw Amendment.* The Bylaw Amendment, in Article I, Section 1.13(a) and Section 1.13(c)(ii), states that a group of up to 50 eligible stockholders may form for the purposes of satisfying the ownership threshold for nominations. Based on our review of the Proxy Access No-Action Letters, we believe that the inclusion of a stockholder aggregation limit as low as 20 has not affected the Staff’s prior analysis of substantial implementation under Rule 14a-8(i)(10), even when the shareholder proposals called for unlimited or unrestricted group aggregation. *See, e.g., Comcast Corporation* (finding that finding that 20-stockholder aggregation limit substantially implemented the shareholder proposal; *Valley Nat'l Bancorp; Danaher Corp.* (same); *Berry Plastics Group* (same); *Cisco Systems, Inc.* (same); *WD-40 Co.* (same); *Leidos Holdings, Inc.* (same); *Quest Diagnostics Inc.* (same); *Amazon.com, Inc.* (same); *McGraw Hill Financial, Inc.* (same); *PG&E Corp.* (same); *Baxter International Inc.* (same); *Capital One Financial Corp.* (same); *General Dynamics Corp.* (same); *Northrop Grumman Corp.* (same); *Target Corp.* (same); *Time Warner Inc.* (same); *UnitedHealth Group Inc.* (same). Similarly, under certain circumstances, the Staff has allowed the exclusion of shareholder proposals that called for an increase of the aggregation limit in existing proxy access bylaws from 20 to 50 stockholders. *See, e.g., Amazon.com, Inc.* (Mar. 7, 2017); *The Dun & Bradstreet Corp.* (Feb. 10, 2017); *General Dynamics Corporation* (Feb. 10, 2017); *NextEra Energy, Inc.* (Feb. 10, 2017); *PPG Industries, Inc.* (Feb. 10, 2017); *Reliance Steel & Aluminum Co.* (avail. Feb. 10, 2017); *United Continental Holdings, Inc.* (Feb 10, 2017). Furthermore, based on Symantec’s analysis of its stockholder base, Symantec believes the 50-stockholder aggregation limit in the Bylaw Amendment provides numerous opportunities for holders of less than 3% of Symantec’s shares to combine with other stockholders (including “groups made up entirely of small [stockholders]” as the Proposal provides) to satisfy the 3% ownership requirement. As such, Symantec believes the Bylaw Amendment provides a meaningful proxy access right to Symantec’s stockholders, including groups made up entirely of small stockholders. Accordingly and consistent with the Staff’s interpretation that substantial implementation does not require implementation in full or exactly as presented, we believe the differences between the Proposal and the Bylaw Amendment in this regard are inconsequential as the essential objective of the Proposal has been met.

### ***Statement of Support***

*The Proposal.* The Proposal allows “Nominators” to submit a statement not exceeding 500 words in support of the nominee.

*The Bylaw Amendment.* Article I, Section 1.13(a) of the Bylaw Amendment allows the Nominating Stockholder to submit a statement of support in favor of the nominee, provided that the statement does not exceed 500 words.

### ***Other Restrictions***

*The Proposal.* The Proposal states that “[n]o limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election” and that Symantec “shall not require that the Nominators pledge to hold stock after the annual meeting if their nominees fail to win election.”

*The Bylaw Amendment.* Article I, Section 1.13(e) of the Bylaw Amendment does not place any restrictions or limitations on the re-nomination by the Nominating Stockholders of stockholder nominees who may have failed to receive a specific number or percentage of votes at a previous stockholder meeting. Article 1, Section 1.13(d) of the Bylaw Amendment does not require that the Nominating Stockholder pledge to hold Symantec’s stock after the annual meeting if such Nominating Stockholder’s nominee fails to win the election.

As demonstrated above, the Bylaw Amendment, when viewed in its totality, compares favorably with the proxy access terms presented in the Proposal. Symantec believes that the Bylaw Amendment advances the goal of providing meaningful proxy access to stockholders and is consistent with prevailing corporate governance standards. Because the Bylaw Amendment compares favorably and implements the essential objective of the Proposal – meaningful proxy access – Symantec believes that it has substantially implemented the Proposal. As such, consistent with Rule 14a-8(i)(10) and long-standing precedent thereunder, the minor variations or additional terms that extend beyond the Proposal’s provisions should not prevent Symantec from excluding the Proposal on the basis that it has been substantially implemented. Moreover, we believe the Proxy Access No-Action Letters – several of which<sup>1</sup> allowed companies that adopted proxy access bylaw amendments nearly identical to Symantec’s to exclude from their proxy statements shareholder proposals nearly identical to the Proponent’s – supports a finding by the Staff that Symantec has substantially implemented the Proposal and may exclude the Proposal from the Proxy Materials.

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<sup>1</sup> See *OGE Energy Corp.*; *Comcast Corporation*; *Equinix, Inc.*; *Leidos Holdings, Inc.*; *McGraw Hill Financial, Inc.*; and *PG&E Corp.*

## CONCLUSION

For the foregoing reasons, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if Symantec excludes the Proposal from the Proxy Materials. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should the Staff have questions or desire any additional information in support of our position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact me by telephone at (415) 875-2479 or Scott C. Taylor, Executive Vice President, General Counsel and Secretary of Symantec at (650) 527-6634. Please direct any correspondence regarding this letter via e-mail to [Scott\\_Taylor@symantec.com](mailto:Scott_Taylor@symantec.com).

Sincerely,

A handwritten signature in blue ink, appearing to read "W-L Hughes".

William L. Hughes, Esq.

Enclosures

cc: Scott C. Taylor, Symantec Corporation  
James McRitchie  
John Chevedden

# EXHIBIT A

---

**From:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Date:** Thursday, May 4, 2017 at 10:22 AM  
**To:** Scott Taylor <[scott\\_taylor@symantec.com](mailto:scott_taylor@symantec.com)>  
**Cc:** "Simona B. Katcher" <[Simona\\_Katcher@symantec.com](mailto:Simona_Katcher@symantec.com)>  
**Subject:** [EXT] Rule 14a-8 Proposal (SYMC)``

Dear Mr. Taylor,  
Please see the attached rule 14a-8 proposal to enhance long-term shareholder value.  
Sincerely,  
John Chevedden

James McRitchie

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

Scott C. Taylor, EVP  
General Counsel & Secretary  
Symantec Corporation  
350 Ellis Street  
Mountain View, California 94043  
Attn: Corporate Secretary  
Phone: 650-527-8000

Via email: [Scott\\_Taylor@symantec.com](mailto:Scott_Taylor@symantec.com)

Dear Corporate Secretary,

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

I am submitting the attached 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 that required stock until the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms I am delegating John Chevedden 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 \*\*\*

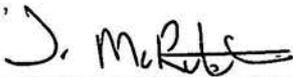
\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\* to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

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,



James McRitchie

May 4, 2017

Date

cc: Jonathan Doros, Investor Relations [Jonathan\\_Doros@symantec.com](mailto:Jonathan_Doros@symantec.com)

[SYMC – Rule 14a-8 Proposal, May 4, 2017]  
Proposal [4\*] - Shareholder Proxy Access

RESOLVED: Shareholders of Symantec Corporation (the “Company”) ask the board of directors (the “Board”) to amend its bylaws or other documents, as necessary, to provide proxy access for shareholders, even groups made up entirely of small shareholders, as follows:

1. *Nominating shareholders or shareholder groups (“Nominators”) must beneficially own 3% or more of the Company’s outstanding common stock (“Required Stock”) continuously for at least three years and pledge to hold such stock through the annual meeting.*
2. *Nominators may submit a statement not exceeding 500 words in support of each nominee to be included in the Company proxy.*
3. *The number of shareholder-nominated candidates eligible to appear in proxy materials shall be one quarter of the directors then serving or two, whichever is greater.*
4. *No limitation shall be placed on the number of shareholders that can aggregate their shares to achieve the 3% of Required Stock.*
5. *No limitation shall be placed on the re-nomination of shareholder nominees by Nominators based on the number or percentage of votes received in any election.*
6. *The Company shall not require that Nominators pledge to hold stock after the annual meeting if their nominees fail to win election.*
7. *Loaned securities shall be counted as belonging to a nominating shareholder if the shareholder represents it has the legal right to recall those securities for voting purposes and will hold those securities through the date of the annual meeting.*

Supporting Statement:

The SEC’s universal proxy access Rule 14a-11 (<https://www.sec.gov/rules/final/2010/33-9136.pdf>) was vacated after a court decision regarding the SEC’s cost-benefit analysis. Therefore, proxy access rights must be established on a company-by-company basis. Subsequently, *Proxy Access in the United States: Revisiting the Proposed SEC Rule* (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>) a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion. *Public Versus Private Provision of Governance: The Case of Proxy Access* (<http://ssrn.com/abstract=2635695>) found a 0.5 percent average increase in shareholder value for proxy access targeted firms.

*Proxy Access: Best Practices*

([http://www.cii.org/files/publications/misc/08\\_05\\_15\\_Best%20Practices%20-%20Proxy%20Access.pdf](http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf)) by the Council of Institutional Investors, “highlights the most troublesome provisions” in recently implemented access bylaws, such as the fact that even if the 20 largest public pension fund members were able to aggregate their shares, they would not meet the 3% criteria at most companies examined by the Council.

Many corporate boards have adopted proxy access bylaws with troublesome provisions that significantly impair the ability of shareholders to participate in the nominating process, the ability of shareholder nominees to effectively serve if elected, and the ability of shareholder nominees to run again. Adoption of bylaws with *all* the requested elements outlined above would help ensure meaningful proxy access is available to shareholders, even groups made up entirely of small shareholders.

Increase Shareholder Value  
Vote for Shareholder Proxy Access Enhancement – Proposal [4\*]

Notes:

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

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

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

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

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

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

---

**From:** Office of the General Counsel <XRM-offgencnsl@symantec.com>  
**Sent:** Wednesday, May 10, 2017 10:49 AM  
**To:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Cc:** Jonathan Doros  
**Subject:** Rule 14a-8 Proposal (SYMC)  
**Attachments:** Response\_5.10.17.pdf

Mr. Chevedden:

Attached please find correspondence from Symantec Corporation relating to James McRitchie's letter to (and proposed shareholder resolution re) Symantec Corporation transmitted to us on May 4, 2017.

Original (hard copy) of this correspondence to be transmitted to you as well.

Very truly yours,

Scott C. Taylor

**Office of the General Counsel**  
Scott Taylor, Executive Vice President and General Counsel  
Symantec Corporation  
[www.symantec.com](http://www.symantec.com)





May 10, 2017

Via Email and Federal Express

John Chevedden

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

Copy to:  
James McRitchie

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

E-mail: \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Dear Mr. Chevedden:

On May 4, 2017, Symantec Corporation ("**Symantec**") received Mr. McRitchie's shareholder proposal (the "**Proposal**") for Symantec's 2017 Annual Meeting of Stockholders (the "**Meeting**") included in a letter dated May 4, 2017, pursuant to which Mr. McRitchie designated you as his agent with respect to all communications relating to the Proposal. One of the procedural requirements in submitting a shareholder proposal is to provide proof that, at the time Mr. McRitchie submitted his Proposal, he continuously held at least \$2,000 in market value of Symantec's shares for at least one year. Proof of ownership was omitted from the documents submitted with the Proposal. For your convenience, we have enclosed a copy of Rule 14a-8 under the Securities Exchange Act of 1934, which describes in Question 2 the eligibility requirements for submitting a proposal and how you can demonstrate to Symantec Mr. McRitchie's eligibility to submit a proposal.

On May 8, 2017, Symantec confirmed with its transfer agent that Mr. McRitchie was not a registered holder as of May 4, 2017, or for the one year preceding May 4, 2017. Therefore, in order to prove Mr. McRitchie's eligibility to Symantec, Mr. McRitchie must provide Symantec's Secretary with a written statement from the record holder of Mr. McRitchie's shares (usually a broker or bank) verifying that, at the time Mr. McRitchie submitted his Proposal (May 4, 2017), he continuously held at least \$2,000 in market value of Symantec shares for at least one year.

In the event that you are able to correct this deficiency, please send the written statement referred to above to Symantec Corporation, c/o Scott C. Taylor, EVP General Counsel and Secretary, 350 Ellis Street, Mountain View, CA 94043 (or alternatively you may transmit the statement electronically to [Scott\\_Taylor@symantec.com](mailto:Scott_Taylor@symantec.com)). Pursuant to Rule 14a-8, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this notification. If the deficiency noted above is not corrected within this time period, Symantec may elect not to include the Proposal in its proxy statement for its 2017 Annual Meeting of Shareholders.

If you have any questions, please feel free to contact me at (650) 527-8000.

Very truly yours,

A handwritten signature in black ink that reads "Scott Taylor".

Scott C. Taylor, EVP General Counsel and Secretary

cc: Jonathan Droso, Investor Relations, Symantec Corporation, [Jonathan\\_Doros@symantec.com](mailto:Jonathan_Doros@symantec.com)



Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

**§240.14a-8 Shareholder proposals.**

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

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

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

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



(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

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

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

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

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

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

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

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

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf,



must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

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

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

(i) *Question 9*: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) *Improper under state law*: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

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

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

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

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

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

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

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

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

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

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



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

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

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

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

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

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

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

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

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

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



(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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**From:** \*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*  
**Date:** May 10, 2017 at 10:29:45 PM CDT  
**To:** Scott Taylor <[scott\\_taylor@symantec.com](mailto:scott_taylor@symantec.com)>  
**Cc:** Simona B. Katcher <[Simona\\_Katcher@symantec.com](mailto:Simona_Katcher@symantec.com)>  
**Subject:** [EXT] Rule 14a-8 Proposal (SYMC) blb

Mr. Taylor,  
Please see the attached broker letter.  
Sincerely,  
John Chevedden



05/07/2017

James Mcritchie, Roth IRA

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

Re: Your TD Ameritrade Account Ending in ~~1234567890~~ \*\*\*  
FISMA & OMB Memorandum M-07-16 \*\*\*

Dear James Mcritchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held, and has held continuously for more than 13 months, 100 shares of Symantec Corporation (SYMC) common stock in their account ending in ~~1234567890~~ at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

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,

Joy Busse  
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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# EXHIBIT B

**Item 9B. Other Information**

The information below is reported in lieu of information that would be reported under Items 5.03 under Form 8-K.

On May 17, 2017, our Board of Directors (the "Board") adopted amendments to our Bylaws, as amended (the "Bylaws"), to implement proxy access. As amended, the Bylaws include a new Section 1.13 permitting a stockholder, or a group of up to 50 stockholders, owning continuously for at least three years a number of shares of our common stock that constitutes at least 3% of the outstanding shares of our common stock, to nominate and include in our proxy materials director nominees constituting up to the greater of two individuals or 20% of the Board, provided that the stockholder(s) and the nominee(s) satisfy the requirements specified in the Bylaws. The amended Bylaws also reflect certain conforming and clarifying changes in Section 1.12 of the Bylaws.

The description of the Bylaws contained herein is qualified in its entirety by reference to the Bylaws, a copy of which is filed herewith as Exhibit 3.05 and is incorporated herein by reference.

**BYLAWS OF  
SYMANTEC CORPORATION  
(A DELAWARE CORPORATION)**  
(as amended and restated on May 17, 2017)

**ARTICLE I  
STOCKHOLDERS**

**Section 1.1. Annual Meetings.** An annual meeting of stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as the Board of Directors shall each year fix. Any other proper business may be transacted at the annual meeting.

**Section 1.2. Special Meetings.**

(a) Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairman of the Board, the President or the Board of Directors. Special meetings may not be called by any other person or persons, except as provided in Section 1.2(b) below.

(b) Special meetings of the stockholders of the Corporation shall be called by the Board of Directors upon written request to the Secretary of the Corporation of one or more stockholders representing in the aggregate not less than fifteen percent (15%) of the outstanding shares entitled to vote on the matter or matters to be brought before the proposed special meeting. A request to the Secretary of the Corporation shall be signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting and shall be accompanied by a notice setting forth the information required by subparagraph (a)(ii) of Section 1.12 of this Article as to the business proposed to be conducted and any nominations proposed to be presented at such special meeting and as to the stockholder(s) proposing such business or nominations, and by a representation by the stockholder(s) that within five (5) business days after the record date for any such special meeting it will provide such information as of the record date for such special meeting. A special meeting requested by stockholders shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any such special meeting shall not be more than ninety (90) days after the request to call the special meeting is received by the Secretary of the Corporation. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if either (a) the Board of Directors has called or calls for an annual meeting of stockholders to be held within ninety (90) days after the Secretary of the Corporation receives the request for the special meeting and the Board of Directors determines in good faith that the business of such annual meeting includes (among any other matters properly brought before the annual meeting) the business specified in the request or (b) an annual or special meeting that included the business specified in the request (as determined in good faith by the Board of Directors) was held not more than ninety (90) days before the request to call the special meeting was received by the Secretary of the Corporation. A stockholder may revoke a request for a special meeting at any time by written revocation delivered to the Secretary of the Corporation, and if such revoking stockholder had joined with other stockholders to submit the request for a special meeting pursuant to this subparagraph (b), and if the remaining unrevoked requests from stockholders joining in such request represent less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board of Directors, in its discretion, may refrain from calling the special meeting or cancel the special meeting, as the case may be. Business transacted at a special meeting requested by stockholders shall be limited to the purpose(s) stated in the request for meeting, provided, however, that the Board of Directors shall have the authority in its discretion to submit additional matters to the stockholders, and to cause other business to be transacted, at any special meeting requested by stockholders.

(c) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. The chairman of the meeting shall have the power and duty to determine whether a nomination or any other business brought before a special meeting was made in accordance with the procedures set forth in this section, and, if any nomination or other business is not in compliance with this section (including if the stockholder does not provide the information that it represents it will provide under this section to the Corporation within five (5) business days following the record date for the meeting), to declare that such defective nomination or proposal shall be disregarded, notwithstanding that proxies in respect of such matters may have been received.

**Section 1.3. Notice of Meetings.** Written notice of all meetings of stockholders shall be given stating the place, date and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation, such notice 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 such meeting.

**Section 1.4. Adjournments.** Any meeting of stockholders may adjourn from time to time to reconvene at the same or another place, and notice need not be given of any such adjourned meeting if the time, date and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting.

**Section 1.5. Quorum.** At each meeting of stockholders, the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for the transaction of business, except if otherwise required by law. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any of the Corporation's stock held by it in a fiduciary capacity.

**Section 1.6. Organization.** Meetings of stockholders shall be presided over by such person as the Board of Directors may designate, or, in the absence of such a person, the Chairman of the Board, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting. Such person shall be chairman of the meeting and shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The Secretary of the Corporation shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

**Section 1.7. Voting; Proxies.** Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, each stockholder shall be entitled to one vote for each share of stock held by such stockholder. Each stockholder entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for such stockholder by proxy. If a vote is to be taken by written ballot, each such ballot shall state the

name of the stockholder or proxy voting and such other information as the chairman of the meeting deems appropriate. At all meetings of stockholders for the election of directors, the affirmative vote of the majority of the votes cast (as such vote is defined in Article II, Section 2.1 of these Bylaws) shall be sufficient to elect, unless the election of directors meets both conditions of the proviso to the fourth sentence of Section 2.1, in which case a plurality of the votes cast shall be sufficient to elect. All other elections or questions, unless otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, shall be decided by the affirmative vote of the holders of a majority of the shares of stock entitled to vote thereon that are present in person or represented by proxy at the meeting.

**Section 1.8. Fixing Date for Determination of Stockholders of Record.** In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, then the record date shall be as provided by law. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

**Section 1.9. List of Stockholders Entitled to Vote.** A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list may also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present.

**Section 1.10. Action by Consent of Stockholders.** Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the 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 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. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

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 the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten (10) days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten (10) days of the date on which such a request 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 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 the State of Delaware, its principal place of business, or any 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. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

### **Section 1.11. Inspectors of Elections.**

**(a) Applicability.** Unless otherwise provided in the Corporation's Certificate of Incorporation or required by the Delaware General Corporation Law, the following provisions of this Section 1.11 shall apply only if and when the Corporation has a class of voting stock that is: (i) listed on a national securities exchange; (ii) authorized for quotation on an interdealer quotation system of a registered national securities association; or (iii) held of record by more than 2,000 stockholders; in all other cases, observance of the provisions of this Section 1.11 shall be optional and at the discretion of the Corporation.

**(b) Appointment.** The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

**(c) Inspector's Oath.** Each inspector of election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

**(d) Duties of Inspectors.** At a meeting of stockholders, the inspectors of election shall (i) ascertain the number of shares outstanding and the voting power of each share, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors and (v) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

**(e) Opening and Closing of Polls.** The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the inspectors at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

**(f) Determinations.** In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with Section 212(c)(2) of the Delaware General Corporation Law, the ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons that represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes

than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.11 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

## **Section 1.12. Notice of Stockholder Business; Nominations.**

### **(a) Annual Meeting of Stockholders.**

(i) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders shall be made at an annual meeting of stockholders (A) pursuant to the Corporation's notice of such meeting, (B) by or at the direction of the Board of Directors or (C) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the notice provided for in this Section 1.12, who is entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.12 or Section 1.13 of this Article, as the case may be.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of subparagraph (a)(i) of this Section 1.12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely (other than a notice by an Eligible Holder (as defined in Section 1.13 of this Article) who seeks to include a Nominee (as defined in Section 1.13 of this Article) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.13 of this Article), a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder, to be timely, must be so delivered not later than the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment or postponement of a meeting of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice (other than a notice by an Eligible Holder (as defined in Section 1.13 of this Article) who seeks to include a Nominee (as defined in Section 1.13 of this Article) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.13 of this Article) shall set forth: (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (1) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (2) the class and number of shares of the Corporation that are owned beneficially and held of record by such stockholder and such beneficial owner.

(iii) Notwithstanding anything in the second sentence of subparagraph (a)(ii) of this Section 1.12 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased board of directors at least seventy (70) days prior to the first anniversary of the preceding year's annual meeting of stockholders (or, if the annual meeting of stockholders is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least seventy (70) days prior to such annual meeting), a stockholder's notice required by this Section 1.12 (other than a notice by an Eligible Holder (as defined in Section 1.13 of this Article) who seeks to include a Nominee (as defined in Section 1.13 of this Article) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.13 of this Article) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(iv) Notwithstanding the provisions of subparagraph (a)(ii) of Section 1.12 of this Article, nominations of persons for election to the Board of Directors may also be properly brought before an annual meeting of stockholders by any Eligible Holder (as defined in Section 1.13 of this Article) who has satisfied the requirements of Section 1.13 of this Article.

**(b) Special Meetings of Stockholders.** Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of such meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of such meeting (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.12. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by subparagraph (a)(ii) of this Section 1.12 shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

**(c) General.**

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.12 or Section 1.13 of this Article, as the case may be, shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.12. Except as otherwise provided by law or these Bylaws (including Section 1.13 of this Article), the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.12 and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall be disregarded.

(ii) For purposes of this Section 1.12 and Section 1.13 of this Article, the term “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to sections 13, 14 or 15(d) of the Exchange Act.

(iii) Notwithstanding the foregoing provisions of this Section 1.12 and the provisions of Section 1.13 of this Article, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.12 or Section 1.13 of this Article shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act.

### **Section 1.13. Stockholder Nominations Included in the Corporation’s Proxy Materials.**

**(a) Inclusion of Nominees in Proxy Statement.** Subject to the provisions of this Section 1.13, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders: (i) the name or names of any person or persons nominated for election (each, a “Nominee”), which shall also be included on the Corporation’s form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to fifty (50) Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board of Directors, all applicable conditions and complied with all applicable procedures set forth in this Section 1.13 (such Eligible Holder or group of Eligible Holders being a “Nominating Stockholder”); (ii) disclosure about each Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement; (iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of each Nominee’s election to the Board of Directors (subject, without limitation, to Section 1.13(e)(ii)), if such statement does not exceed five hundred (500) words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the “Supporting Statement”); and (iv) any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of each Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section and any solicitation materials or related information with respect to a Nominee.

For purposes of this Section 1.13, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer of the Corporation designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Stockholder, any Nominee and any other person so long as made in good faith (without any further requirements). The chairman of any annual meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of this Section 1.13 and, if not so nominated, shall direct and declare at the meeting that such Nominee shall not be considered.

#### **(b) Maximum Number of Nominees.**

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of directors constituting the greater of (a) two (2) or (b) twenty percent (20%) of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 1.13 (rounded down to the nearest whole

number) (the “Maximum Number”). The Maximum Number for a particular annual meeting shall be reduced by: (1) Nominees who the Board of Directors itself decides to nominate for election at such annual meeting; (2) Nominees who cease to satisfy, or Nominees of Nominating Stockholders that cease to satisfy, the eligibility requirements in this Section 1.13, as determined by the Board of Directors; (3) Nominees whose nomination is withdrawn by the Nominating Stockholder or who become unwilling to serve on the Board of Directors; and (4) the number of incumbent directors who had been Nominees with respect to any of the preceding two (2) annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board of Directors. In the event that one (1) or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in in paragraph (d) of this Section 1.13 but before the date of the annual meeting, and the Board of Directors resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Nominees pursuant to this Section 1.13 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one (1) Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder’s Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one (1) Nominee. If, after the deadline for submitting a Nomination Notice as set forth in paragraph (d) of this Section 1.13, a Nominating Stockholder or a Nominee ceases to satisfy the eligibility requirements in this Section 1.13, as determined by the Board of Directors, a Nominating Stockholder withdraws its nomination or a Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing or other distribution of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that a Nominee will not be included as a nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

**(c) Eligibility of Nominating Stockholder.**

(i) An “Eligible Holder” is a person who has either (a) been a record holder of the shares of common stock used to satisfy the eligibility requirements in paragraph (c) of this Section 1.13 continuously for the three (3)-year period specified in subparagraph (c)(ii) of this Section 1.13 or (b) provides to the Secretary of the Corporation, within the time period referred to in paragraph (d) of this Section 1.13, evidence of continuous ownership of such shares for such three (3)-year period from one (1) or more securities intermediaries in a form that the Board of Directors determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(ii) An Eligible Holder or group of up to fifty (50) Eligible Holders may submit a nomination in accordance with this Section 1.13 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation’s common stock throughout the three (3)-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number through the date of the annual meeting. Two (2) or more funds that are (a) under common management and investment control, (b) under common management and funded primarily by a single employer or (c) a “group of investment companies,” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination

Notice documentation reasonably satisfactory to the Corporation that demonstrates that the funds meet the criteria set forth in clauses (a), (b) or (c) above. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 1.13, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder cease to satisfy the eligibility requirements in this Section 1.13, as determined by the Board of Directors, or withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The “Minimum Number” of shares of the Corporation’s common stock means three percent (3%) of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any filing by the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 1.13, an Eligible Holder “owns” only those outstanding shares of the Corporation as to which the Eligible Holder possesses both (a) the full voting and investment rights pertaining to the shares; and (b) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided, however, that the number of shares calculated in accordance with clauses (a) and (b) shall not include any shares: (1) purchased or sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) sold short by such Eligible Holder, (3) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder’s or any of its affiliates’ full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates.

An Eligible Holder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder’s ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five (5) business days’ notice. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the Corporation are “owned” for these purposes shall be determined by the Board.

(v) No Eligible Holder shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any Eligible Holder appears as a member of more than one (1) group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

**(d) Nomination Notice.** To nominate a Nominee, the Nominating Stockholder must, not less than one hundred twenty (120) nor more than one hundred fifty (150) calendar days prior to the anniversary of the date (as specified in the Corporation’s proxy materials for its immediately preceding annual meeting

of stockholders) on which the Corporation first sent its proxy materials for its immediately preceding annual meeting of stockholders, deliver to the Secretary of the Corporation at the principal executive office of the Corporation all of the below information and documents (collectively, the “Nomination Notice”); provided, however, that if (and only if) the scheduled date of the annual meeting is thirty (30) days before or thirty (30) days after such anniversary date, the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is one hundred eighty (180) days prior to the date of the annual meeting or the close of business on the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event will the public announcement of an adjournment of an annual meeting of stockholders commence a new time period for the giving of the Nomination Notice as provided above. For purposes of these bylaws, the Nomination Notice shall include the following: (i) a Schedule 14N (or any successor form) relating to each Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with the rules of the Securities and Exchange Commission; (ii) a written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of each Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

(a) the information required with respect to the nomination of directors pursuant to this Section 1.13;

(b) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(c) a representation and warranty that the Nominating Stockholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(d) a representation and warranty that each Nominee’s candidacy or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation’s securities are traded;

(e) a representation and warranty that each Nominee: (1) does not have any direct or indirect relationship with the Corporation that would cause the Nominee to be considered not independent pursuant to the Corporation’s Corporate Governance Guidelines as most recently published on its website and otherwise qualifies as independent under the rules of the primary stock exchange on which the Corporation’s shares of common stock are traded; (2) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Corporation’s shares of common stock are traded; (3) is a “non-employee director” for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (4) is an “outside director” for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); and (5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended, or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Nominee;

(f) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in paragraph (c) of this Section 1.13 and has provided evidence of ownership to the extent required by subparagraph (c)(i) of this Section 1.13;

(g) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in subparagraph (c)(i) of this Section 1.13 through the date of the annual meeting;

(h) details of any position of a Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three (3) years preceding the submission of the Nomination Notice;

(i) a representation and warranty that the Nominating Stockholder will not engage in a “solicitation” within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to a Nominee or any nominee of the Board;

(j) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation’s proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;

(k) if desired, a Supporting Statement; and

(l) in the case of a nomination by a group, the designation by all group members of one (1) group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(iii) an executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Stockholder (including each group member) agrees:

(a) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(b) to file any written solicitation or other communication with the Corporation’s stockholders relating to one or more of the Corporation’s directors or director nominees or any Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(c) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(d) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys’ fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 1.13;

(e) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member), with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to

be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in paragraph (c) of this Section 1.13, to promptly (and in any event within forty-eight (48) hours of discovering such misstatement, omission or failure) notify the Corporation and any other recipient of such communication of (1) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (2) such failure; and

(iv) an executed agreement, in a form deemed satisfactory by the Board of Directors, by each Nominee:

(a) to provide to the Corporation such other information and certifications, including completion of the Corporation's director questionnaire, as it may reasonably request;

(b) at the reasonable request of the Nominating and Governance Committee, to meet with the Nominating and Governance Committee to discuss matters relating to the nomination of such Nominee to the Board of Directors, including the information provided by such Nominee to the Corporation in connection with his or her nomination and such Nominee's eligibility to serve as a member of the Board of Directors;

(c) that such Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Guidelines, Code of Conduct and any other Corporation policies and guidelines applicable to directors; and

(d) that such Nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation that has not been disclosed to the Corporation, (ii) any agreement, arrangement or understanding with any person or entity as to how such Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation or (iii) any Voting Commitment that could limit or interfere with such Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

The information and documents required by paragraph (d) of this Section 1.13 to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in paragraph (d) of this Section 1.13 (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

**(e) Exceptions.**

(i) Notwithstanding anything to the contrary contained in this Section 1.13, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Nominee, if: (a) the Corporation receives a notice pursuant to this Section 1.13 that a stockholder intends to nominate a candidate for director at the

annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Corporation; (b) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 1.13, the Nominating Stockholder withdraws its nomination or the chairman of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 1.13 and shall therefore be disregarded; (c) the Board of Directors determines that such Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the primary stock exchange on which the Corporation's common stock is traded; (d) such Nominee was nominated for election to the Board of Directors pursuant to this Section 1.13 at one of the Corporation's two preceding annual meetings of stockholders and either withdrew or became ineligible; (e) such Nominee has been, within the past three (3) years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or (f) the Corporation is notified, or the Board of Directors determines, that the Nominating Stockholder or the Nominee has failed to continue to satisfy the eligibility requirements described in paragraph (c) of this Section 1.13, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or such Nominee under this Section 1.13;

(ii) Notwithstanding anything to the contrary contained in this Section 1.13, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Nominee included in the Nomination Notice, if the Board of Directors determines that: (a) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (b) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (c) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

## **ARTICLE II BOARD OF DIRECTORS**

**Section 2.1. Number; Qualifications; Election by Stockholders.** The Board of Directors shall consist of one or more members. The initial number of directors shall be one, and thereafter shall be fixed from time to time by resolution of the Board of Directors. Directors need not be stockholders. Except as provided in Section 2.2 of this Article, each nominee for director shall be elected director by the affirmative vote of the majority of the votes cast with respect to such nominee at any meeting for the election of directors at which a quorum is present; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which (i) the Secretary of the Corporation receives a notice that a stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for (x) stockholder nominees for director set forth in Article I, Section 1.12 of these Bylaws or (y) or the inclusion of a Nominee (as defined in Section 1.13 of these Bylaws) in the Corporation's proxy statement set forth in Section 1.13 of these Bylaws, and (ii)

such nomination has not been withdrawn by such stockholder on or before the tenth (10th) day before the Corporation first mails its notice of meeting for such meeting to the stockholders. For purposes of this Section 2.1 and Article I, Section 1.7 of these Bylaws, election by “the affirmative vote of the majority of the votes cast” means the votes cast “for” a nominee’s election must exceed the votes cast “against” that nominee’s election. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

**Section 2.2. Election; Resignation; Removal; Vacancies.** The Board of Directors shall initially consist of the person or persons elected by the incorporator. Each director shall hold office until the next annual meeting of stockholders and until his or her successor is elected and qualified, or until his or her earlier resignation or removal. Any director may resign at any time upon written notice to the Corporation. Subject to the rights of any holders of Preferred Stock then outstanding, (i) any director or the entire Board of Directors may be removed, with or without cause, by the holders or a majority of the shares then entitled to vote at an election of directors, and (ii) any vacancy occurring in the Board of Directors for any cause, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, may be filled by the stockholders, by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 2.3. Regular Meetings.** Regular meetings of the Board of Directors may be held at such places, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board of Directors.

**Section 2.4. Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or a majority of the members of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally or in writing, by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile or similar communication method. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

**Section 2.5. Telephonic Meetings Permitted.** Members of the Board of Directors, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or similar communications equipment shall constitute presence in person at such meeting.

**Section 2.6. Quorum; Vote Required for Action.** At all meetings of the Board of Directors a majority of the total number of authorized directors shall constitute a quorum for the transaction of business. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 2.7. Organization.** Meetings of the Board of Directors shall be presided over by the Chairman of the Board, or in his or her absence by the President, or in his or her absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.8. Written Action by 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 such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

**Section 2.9. Powers.** The Board of Directors may, except as otherwise required by law or the Certificate of Incorporation, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

**Section 2.10. Compensation of Directors.** Directors, as such, may receive, pursuant to a resolution of the Board of Directors, fees and other compensation for their services as directors, including, without limitation, their services as members of committees of the Board of Directors.

### ARTICLE III COMMITTEES

**Section 3.1. Committees.** The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board 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 a member of the committee, the member or members thereof present at any meetings and not disqualified from voting, whether or not he, she or they constitute 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. Any such committee, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in subsection (a) of Section 151 of the Delaware General Corporation Law, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution and distribution of assets of the Corporation, or the conversion into, or the exchange of such shares for, shares of any other class classes or any other series of the same or any other class or classes of stock of the Corporation, or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series), adopting an agreement of merger or consolidation under Sections 251 or 252 of the Delaware General Corporation Law, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation; and unless the resolution of the Board of Directors expressly so provides, no such committee shall have the power or authority to declare a dividend, authorize the issuance of stock or adopt a certificate of ownership and merger pursuant to section 253 of the Delaware General Corporation Law.

**Section 3.2. Committee Rules.** Unless the Board of Directors otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

### ARTICLE IV OFFICERS

**Section 4.1 Generally.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, including a Chairman of the Board of Directors and/or Chief Financial Officer, as may from time to time be appointed by the Board of Directors. Officers shall be elected by the Board of Directors. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors.

**Section 4.2. Chairman of the Board.** The Chairman of the Board shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and duties as the Board of Directors may from time to time prescribe.

**Section 4.3. President.** Unless otherwise designated by the Board of Directors, the President shall be the chief executive officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, he or she shall have the responsibility for the general management and control of the business and affairs of the Corporation and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to him or her by the Board of Directors. He or she shall have general supervision and direction of all of the officers, employees and agents of the Corporation.

**Section 4.4. Vice President.** Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board of Directors or the President. A Vice President may be designated by the Board to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

**Section 4.5. Chief Financial Officer.** Subject to the direction of the Board of Directors and the President, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of chief financial officer.

**Section 4.6. Treasurer.** The Treasurer shall have custody of all monies and securities of the Corporation. He or she shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board of Directors or the President may from time to time prescribe.

**Section 4.7. Secretary.** The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board of Directors or the President may from time to time prescribe.

**Section 4.8. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

**Section 4.9. Removal.** Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

## **ARTICLE V STOCK**

**Section 5.1. Certificates.** Every holder of stock shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, certifying the number of shares owned by such stockholder in the Corporation. Any or all of the signatures on the certificate may be a facsimile.

**Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates.** The Corporation may issue a new certificate of stock in the place of any certificate previously 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 5.3. Other Regulations.** The issue, transfer, conversion and registration of stock certificates shall be governed by such other regulations as the Board of Directors may establish.

## **ARTICLE VI INDEMNIFICATION**

**Section 6.1. Indemnification of Officers and Directors.** Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation (including any constituent corporation absorbed in a merger) or is or was serving at the request of the Corporation (including any such constituent corporation) as a director or officer of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation Law, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

**Section 6.2. Advance of Expenses.** The Corporation shall pay all expenses incurred by such a director or officer in defending any such proceeding as they are incurred in advance of its final disposition; provided, however, that if the Delaware General Corporation Law then so requires, the payment of such expenses incurred by a director or officer in advance of the final disposition of such proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Article VI or otherwise; and provided further that the Corporation shall not be required to advance any expenses to a person against whom the Corporation brings a claim, in a proceeding, alleging that such person has breached his or her duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction; and provided further that the Corporation shall not be obligated to advance expenses incurred by a director or officer in defending any proceeding if: (i) members of the Board of Directors consisting of those who are not parties to the proceeding for which indemnification is sought, even though less than

a quorum, or (ii) independent legal counsel, selected by the indemnified director or officer and approved by the Board of Directors, which approval may not be unreasonably withheld, or (iii) a panel of arbitrators (one of whom is selected by the Corporation, another of whom is selected by the indemnified director or officer and the last of whom is selected by the first two arbitrators so selected), determines in good faith, that the facts known to them at the time such determination is made demonstrate clearly and convincingly that such director or officer acted in bad faith.

**Section 6.3. Non-Exclusivity of Rights.** The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors or otherwise.

**Section 6.4. Indemnification Contracts.** The Board of Directors is authorized to cause the Corporation to enter into a contract with any director, officer or employee of the Corporation, or any person serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing for indemnification rights equivalent to or, if the Board of Directors so determines, greater than, those provided for in this Article VI.

**Section 6.5. Insurance.** The Corporation shall maintain insurance, at its expense, to the extent it determines such to be reasonably available, to protect itself, its directors and officers, and any other persons the Board of Directors may select, against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

**Section 6.6. Effect of Amendment.** Any amendment, repeal or modification of any provision of this Article VI shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI and existing at the time of such amendment, repeal or modification.

## **ARTICLE VII NOTICES**

**Section 7.1. Notice.** Except as otherwise specifically provided herein or required by law, all notices required to be given pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid telegram, telex, mailgram or facsimile. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (i) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (ii) in the case of delivery by mail, when deposited in the mail, and (iii) in the case of delivery via telegram, mailgram, telex, or facsimile, when dispatched.

**Section 7.2. Waiver of Notice.** Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

## **ARTICLE VIII INTERESTED DIRECTORS**

**Section 8.1. Interested Directors; Quorum.** No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose if: (i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (ii) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1. Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

**Section 9.2. Seal.** The Board of Directors may provide for a corporate seal, which shall have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board of Directors.

**Section 9.3. Form of Records.** Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect the same.

**Section 9.4. Reliance Upon Books and Records.** A member the Board of Directors, shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or reports made to the Corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board of Directors or by any such committee, or in relying in good faith upon other records of the Corporation.

**Section 9.5. Certificate of Incorporation Governs.** In the event of any conflict between the provisions of the Corporation's Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

**Section 9.6. Severability.** If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Corporation's Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

**Section 9.7 Forum for Certain Actions.** Except for (a) actions in which the Court of Chancery in the State of Delaware concludes that an indispensable party is not subject to the jurisdiction of the Delaware courts, and (b) actions in which a federal court has assumed exclusive jurisdiction of a proceeding, any derivative action brought by or on behalf of the Corporation, and any direct action brought by a stockholder against the Corporation or any of its directors or officers, alleging a violation of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws or breach of fiduciary duties or other violation of Delaware decisional law relating to the internal affairs of the Corporation, shall be brought in the Court of Chancery in the State of Delaware, which shall be the sole and exclusive forum for such proceedings; *provided, however*, that the Corporation may consent to an alternative forum for any such proceedings upon the approval of the Board of Directors of the Corporation. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.7.

## **ARTICLE X AMENDMENT**

**Section 10.1. Amendments.** Shareholders of the Corporation holding a majority of the Corporation's outstanding voting stock shall have the power to adopt, amend or repeal Bylaws. The Board of Directors of the Corporation shall also have the power to adopt, amend or repeal Bylaws of the Corporation, except as such power may be expressly limited by Bylaws adopted by the shareholders.