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

DIVISION OF
CORPORATION FINANCE

January 24, 2013

Scott McMillen
The Charles Schwab Corporation
Scott.McMillen@Schwab.com

Re: The Charles Schwab Corporation

Dear Mr. McMillen:

This is in regard to your letter dated January 22, 2013 concerning the shareholder proposal submitted by the Beckman-Lippert CRUT for inclusion in Charles Schwab's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the proponent has withdrawn the proposal, and that Charles Schwab therefore withdraws its January 7, 2013 request for a no-action letter from the Division.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,

Mark F. Vilardo
Special Counsel

cc: Bruce T. Herbert
Investor Voice, SPC
team@investorvoice.net

THE CHARLES SCHWAB CORPORATION
211 Main Street, San Francisco, California 94105

January 22, 2013

By electronic transmission to shareholderproposals@sec.gov

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

Re: ***The Charles Schwab Corporation—Omission of Stockholder Proposal Submitted by Investor Voice on behalf of the Beckman-Lippert CRUT—Securities Exchange Act of 1934, as amended—Rule 14a-8***

Ladies and Gentlemen:

We received the attached notification from Investor Voice withdrawing the shareholder proposal submitted on behalf of the Beckman-Lippert CRUT from consideration at The Charles Schwab Corporation's 2013 Annual Meeting of Stockholders. In light of that withdrawal, we hereby withdraw our no-action request dated January 7, 2013.

Very truly yours,

Scott McMillen
Vice President and Associate General Counsel
Scott.McMillen@Schwab.com

encl.: Notification of Withdrawal of Shareholder Proposal

cc: Bruce T. Herbert, Chief Executive, Investor Voice (team@investorvoice.net)

McMillen, Scott

From: Bruce Herbert - Team IV [team@investorvoice.net]
Sent: Thursday, January 17, 2013 3:12 PM
To: ShareholderProposals@sec.gov
Cc: Dwyer, Carrie; McMillen, Scott; Bruce Herbert - IV Team
Subject: SCHW. Withdrawal of Shareholder Proposal.
Importance: High

VIA ELECTRONIC DELIVERY
To: ShareholderProposals@sec.gov

January 17, 2013

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

Re: The Charles Schwab Corporation, Withdrawal of Shareholder Proposal

Dear Madam or Sir:

The Charles Schwab Corporation, by letter dated January 7, 2013, submitted a no-action request under Rule 14a-8, in response to a shareholder Proposal submitted November 29, 2012 by Investor Voice on behalf of the Beckman-Lippert CRUT.

As a result of worthwhile interactions and in anticipation of ongoing dialogue on the important governance topic of vote-counting, we write to formally withdraw the shareholder Proposal.

In respect for the Commission's time and resources, this makes further consideration of the no-action request unnecessary and, indeed, moot.

We thank the Staff for its time and attention to this matter. Should you have comments or questions, please contact me at (206) 522-1944 or team@investorvoice.net

Happy New Year,

Bruce T. Herbert | AIF
Chief Executive | ACCREDITED INVESTMENT FIDUCIARY

cc: Carrie Dwyer, Executive Vice President, General Counsel and Corporate Secretary, The Charles Schwab Corporation
Scott McMillen, Vice President and Associate General Counsel, The Charles Schwab Corporation
Paul Lippert, Trustee, Beckman-Lippert CRUT

Chief Executive | Accredited Investment Fiduciary
Investor Voice, SPC

2212 Queen Anne Ave N, #406
Seattle, Washington 98109
(206) 522-1944

team@investorvoice.net
www.investorvoice.net

THE CHARLES SCHWAB CORPORATION
211 Main Street, San Francisco, California 94105

January 7, 2013

By electronic transmission to shareholderproposals@sec.gov

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

Re: *The Charles Schwab Corporation—Omission of Stockholder Proposal Submitted by Investor Voice on behalf of the Beckman-Lippert CRUT—Securities Exchange Act of 1934, as amended—Rule 14a-8*

Ladies and Gentlemen:

This letter respectfully requests that the staff of the Division of Corporation Finance (the "*Staff*") of the Securities and Exchange Commission (the "*Commission*") advise The Charles Schwab Corporation, a Delaware corporation (the "*Company*"), that it will not recommend enforcement action to the Commission if the Company omits from the proxy materials (the "*Proxy Materials*") to be distributed by the Company in connection with its 2013 annual meeting of stockholders (the "*2013 Annual Meeting*") the stockholder proposal (the "*Proposal*") submitted by Investor Voice, on behalf of Beckman-Lippert CRUT (the "*Proponent*"), dated November 29, 2012.

Pursuant to Rule 14a-8(j), we have enclosed: (i) a copy of the Proposal (see Exhibit A); (ii) the following explanation of the grounds upon which the Company deems omission of the Proposal to be proper; and (iii) the opinion of Richards, Layton & Finger, P.A., Delaware counsel to the Company (the "*Delaware Law Opinion*"), a copy of which is attached as Exhibit B. A copy of this letter is being sent to notify the Proponent of the Company's intention to omit the Proposal from its Proxy Materials.

The Company anticipates that its Proxy Materials will be finalized for typesetting and printing on or about March 14, 2013 and ready for filing with the Commission on or about March 29, 2013. We respectfully request that the Staff, to the extent possible, advise the Company with respect to the Proposal consistent with this timing.

The Proposal reads as follows:

> RESOLVED: Shareholders of Charles Schwab Corporation ("Schwab" or "Company") hereby ask the Board of Directors to amend the Company's

governing documents to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item (or, "withheld" in the case of board elections). This policy shall apply to all matters unless shareholders have expressly approved a higher threshold for specific types of items.

For the reasons set forth below, the Company respectfully requests the Staff's concurrence that the Company may omit the Proposal from the Proxy Materials pursuant to the following rules:

- Rule 14a-8(i)(2), because the Proposal would cause the Company to violate Delaware law,
- Rule 14a-8(i)(6), because the Company lacks the power and authority to implement the Proposal, and
- Rule 14a-8(i)(1), because the Proposal is an improper subject for stockholder action under Delaware law.

I. The Proposal may be excluded from the Proxy Materials under Rule 14a-8(i)(2) because implementation would cause the Company to violate Delaware law.

Rule 14a-8(i)(2) allows a company to exclude a proposal if implementation of that proposal would cause it to violate any state, federal or foreign law to which it is subject. The Company is a Delaware corporation governed by the General Corporation Law of the State of Delaware (the "*DGCL*"). For the reasons set forth in the Delaware Law Opinion and as described below, the Company believes that implementation of the Proposal would cause it to violate the DGCL. Accordingly, the Proposal may be excluded from the Proxy Materials under Rule 14a-8(i)(2).

The Proposal asks the Company's Board of Directors (the "*Board*") to amend the Company's governing documents to provide that "all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item (or, 'withheld' in the case of board elections)." The only exception provided by the Proposal is when "shareholders have expressly approved a higher threshold for specific types of items."

The Staff has previously found a basis for the exclusion of stockholder proposals whose implementation would require a Delaware corporation to mandate a stockholder voting standard for corporate action that is lower than the standard required by the DGCL. *AT&T Inc.* (Feb. 12, 2010) (permitting exclusion of stockholder proposal under Rule 14a-8(i)(2) where proposal sought implementation of voting standard for stockholder action by written consent that was less than would be required under the General Corporation Law for certain actions); *Bank of America Corporation* (Jan. 13, 2010) (same); *Pfizer Inc.* (Dec. 21, 2009) (same); *Kimberly-Clark Corporation* (Dec. 18, 2009) (same). Similarly, in *The J.M. Smucker Company*, the Staff recently permitted exclusion of an identical proposal to the Proposal because implementation of such voting standard would violate Ohio law. *The J.M. Smucker Company* (June 22, 2012)

(permitting exclusion because certain provisions of the Ohio Revised Code require a greater stockholder voting standard than the standard set forth in the proposal for taking certain corporate actions). For the same reasons, the Proposal submitted to the Company by the Proponent would violate Delaware law. Specifically, the Proposal would require the Board to propose amendments to the certificate of incorporation and/or the bylaws of the Company that, if implemented, would violate Delaware law because they would enable stockholders to authorize the taking of certain corporate actions by the vote of a simple majority of the votes cast FOR and AGAINST the action, rather than the minimum vote required by the DGCL to authorize such actions.

As set forth in the Delaware Law Opinion, there are a number of actions for which the DGCL mandates approval by stockholders representing a majority or more of the outstanding shares entitled to vote on the matter. For example, the DGCL provides that:

- conversion of a corporation to a limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust or partnership (limited or general) must be approved by all outstanding shares of stock of the corporation, whether voting or nonvoting;
- any transfer or domestication of a Delaware corporation to a foreign jurisdiction must be approved by all outstanding shares of stock of the corporation, whether voting or nonvoting;
- a proposal to dissolve the corporation, if not previously approved by the board, must be authorized by the written consent of all of the stockholders entitled to vote thereon; and
- any election by an existing stock corporation to be treated as a "close corporation" must be approved by at least two-thirds of the shares of each class of outstanding stock.

In addition to the foregoing, the DGCL requires a number of corporate actions be adopted or approved by the affirmative vote of a majority of the outstanding stock entitled to vote on such action, such as:

- the removal of a director without cause;
- an amendment to a corporation's certificate of incorporation after the corporation has received payment for its stock;
- an agreement of merger;
- the sale of all or substantially all of the corporation's assets; and
- a proposal to dissolve the corporation, if previously approved by the board.

The majority of the shares entitled to vote on a matter is a much higher threshold than the Proponent's threshold of a simple majority of votes cast. The Proposal makes no exception for

statutorily imposed voting thresholds such as those enumerated above; more stringent standards would be respected by the Proposal only if "shareholders have expressly approved a higher threshold for specific types of items." Accordingly, under Delaware law, the Board could not legally take the steps necessary "to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item" with respect to the matters listed above, because the DGCL mandates a higher voting standard than a simple majority of votes cast. The DGCL does not permit a corporation to specify a *lower* voting standard with respect to the corporate actions for which a stockholder vote is specified. As noted in the Delaware Law Opinion, any such provision specifying a lesser vote than the minimum vote required by the DGCL would be invalid and unenforceable under Delaware law.

In addition, under Delaware law, actions that mandate approval by stockholders representing a majority or more of the outstanding shares entitled to vote on the matter, require that abstentions, broker non-votes and shares absent from the meeting of stockholders must be counted as votes against the action. Because the Proposal would treat abstentions, broker non-votes and shares absent from the meeting of stockholders as having no effect on the outcome of the votes on such action, the Proposal violates Delaware law.

The Proposal would also violate Delaware law to the extent it is interpreted to enable stockholders to amend the Company's certificate of incorporation where the DGCL expressly requires the separate vote of the holders of a specific class or series of stock. The Company's certificate of incorporation authorizes two classes of capital stock: Common Stock and Preferred Stock (which itself has several series designated). The holders of the Company's Common Stock and Preferred Stock, therefore, are entitled to the separate class voting rights applicable under the DGCL. Section 242(b)(2) of the DGCL provides, in pertinent part, as follows:

> The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.

Implementing the Proposal would enable stockholders to act by a simple majority of the votes cast to approve any action, including an amendment to the certificate of incorporation that would, for example, alter the powers, preferences or special rights of the Preferred Stock or Common Stock so as to affect them adversely, without regard for the separate class vote to which they are entitled under the DGCL. As noted in the Delaware Law Opinion, to the extent the Proposal purports to eliminate this statutorily required vote, it would also violate the DGCL.

II. Because implementing the Proposal would cause the Company to violate Delaware law, the Proposal may be excluded from the Proxy Materials under Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal as submitted.

Rule 14a-8(i)(6) permits a company to exclude a proposal from a proxy statement if the company would lack the power or authority to implement it. For the reasons set forth in Section I of this letter, the Company lacks the power to implement the Proposal because the Proposal violates Delaware corporate law.

The Staff has repeatedly recognized that companies do not have the power and authority to implement proposals that violate state law. See, for example, *Abbott Laboratories* (February 2, 2011) (proposal requesting compliance with applicable law voting standard would violate Illinois law); *Schering-Plough Corp.* (March 27, 2008) (proposal that the board adopt cumulative voting would violate New Jersey law); *Bank of America Corp.* (February 26, 2008) (proposal requesting the board to disclose fees paid to a compensation consultant that was subject to a confidentiality agreement would violate North Carolina law); *PG&E Corp.* (February 25, 2008) (proposal that the board adopt cumulative voting would violate California law); *The Boeing Company* (February 19, 2008) (proposal that the board amend the governing documents to remove restriction on the shareholder right to act by written consent would violate Delaware law); *Xerox Corporation* (February 23, 2004) (proposal for board to amend the certificate of incorporation to reinstate the rights of shareholders to take action by written consent and to call special meetings would violate New York law); *CoBancorp Inc.* (February 22, 1996) (proposal that the board rescind an executive stock option plan would violate Ohio law).

Therefore, it would be inappropriate for the Company to submit a matter to its stockholders for a vote if the matter, if approved, would violate Delaware corporate law and would be beyond the Company's power and authority to implement. See Delaware Law Opinion. Accordingly, the Company believes that the Proposal is excludable from the Proxy Materials under Rule 14a-8(i)(6).

III. Because implementing the Proposal would cause the Company to violate Delaware law, the Proposal may be excluded from the Proxy Materials under Rule 14a-8(i)(1) because it is an improper matter for stockholder action under Delaware law.

Rule 14a-8(i)(1) permits exclusion of a proposal if it is not a proper subject for action by stockholders under the laws of the jurisdiction of the company's incorporation. As set forth in Sections I and II of this letter, the Proposal, if adopted, would cause the Company to violate Delaware law and therefore cannot be implemented. Accordingly, as set forth in the Delaware Law Opinion, the Proposal is accordingly an improper subject for stockholder action under the DGCL and is therefore excludable from the Proxy Materials under Rule 14a-8(i)(1).

IV. Conclusion

For the reasons set forth above, the Company respectfully requests that the Staff concur that it will not recommend enforcement action to the Commission if the Company omits the Proposal from the Proxy Materials for the Company's 2013 Annual Meeting.

If you have any questions or need additional information, please do not hesitate to contact the undersigned at (415) 667-1602.

Very truly yours,

Scott McMillen
Vice President and Associate General Counsel
Scott.McMillen@Schwab.com

Exhibit A: Investor Voice Proposal
Exhibit B: Opinion of Richards, Layton & Finger, P.A.

cc: Bruce T. Herbert, Chief Executive, Investor Voice (team@investorvoice.net and overnight mail)

EXHIBIT A

STOCKHOLDER PROPOSAL

Charles Schwab Corporation 2013 – Fair Vote-Counting
(Corner-note for identification purposes only, not intended for publication)

RESOLVED: Shareholders of Charles Schwab Corporation ("Schwab" or "Company") hereby ask the Board of Directors to amend the Company's governing documents to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item (or, "withheld" in the case of board elections). This policy shall apply to all matters unless shareholders have expressly approved a higher threshold for specific types of items.

SUPPORTING STATEMENT:

Schwab is regulated by the Securities and Exchange Commission (SEC). The SEC dictates a single vote-counting standard for establishing eligibility for resubmission of shareholder-sponsored proposals. It is the votes cast FOR, divided by the FOR plus AGAINST votes.

Charles Schwab does not follow the SEC standard, but instead determines results by the votes cast FOR a proposal, divided by the FOR votes, AGAINST votes, and ABSTAIN votes.

This variant method makes Schwab an outlier among its peers in the S&P 500, which generally follow (with limited exceptions) the SEC standard.

Using ABSTAIN votes as Schwab does counters a hallmark of democratic voting – honoring voter intent.

Schwab's policy counts abstentions (for shareholder-sponsored proposals) as having the same effect as votes against the matter. However, thoughtful voters who choose to abstain should not have their choices arbitrarily and universally switched to benefit management.

THREE CONSIDERATIONS:

[1] Abstaining voters consciously act to abstain – to have their vote noted, but not counted. Yet, Schwab unilaterally counts all abstentions in favor of management (irrespective of the voter's intent).

[2] Abstaining voters consciously choose not to support management's recommendation against a shareholder-sponsored item. However, again, Schwab unilaterally counts all abstentions in favor of management (irrespective of the voter's intent).

[3] Further, we observe that Schwab embraces the SEC vote-counting standard (that this proposal requests) for director elections. In these cases, the Company excludes abstentions – which boosts (and therefore favors) the vote-count for management-nominated directors.

However, when it comes to shareholder-sponsored proposals, Schwab does not follow the SEC vote-counting standard. Instead, the Company switches to a more stringent method that includes abstentions (again, to the benefit of management).

IN CLOSING:

Except to favor management in each instance, these practices are arbitrary, fail to respect voter intent, and run counter to core principles of democracy.

We believe a system that is internally inconsistent harms shareholder best-interest, and instead empowers management at the expense of Schwab's true owners.

Schwab tacitly acknowledges the inequity of these practices when it applies the SEC standard to board elections, but applies more stringent requirements to shareholder-sponsored proposals.

This proposal calls for democratic, fair, and consistent use – across-the-board – of the SEC standard, while allowing flexibility for adoption of higher thresholds for extraordinary items.

Therefore, please vote FOR this common-sense proposal that embraces corporate governance best-practices for the benefit of both Company and shareowners.

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EXHIBIT B

OPINION OF COUNSEL

RICHARDS LAYTON & FINGER

January 7, 2013

The Charles Schwab Corporation
211 Main Street
San Francisco, California 94105

Re: Stockholder Proposal on behalf of Beckman-Lippert CRUT

Ladies and Gentlemen:

We have acted as special Delaware counsel to The Charles Schwab Corporation, a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal"), dated November 29, 2012, that has been submitted to the Company on behalf of Beckman-Lippert CRUT (the "Proponent") for the 2013 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Fifth Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on April 9, 2008, as amended by the Certificates of Designation of the Company as filed with the Secretary of State on January 24, 2012 and May 31, 2012 (collectively, the "Certificate of Incorporation"); (ii) the Fourth Restated Bylaws of the Company, as amended on January 27, 2010 (the "Bylaws"); and (iii) the Proposal.

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

THE PROPOSAL

The Proposal states the following:

> "**RESOLVED:** Shareholders of Charles Schwab Corporation ("Schwab" or "Company") hereby ask the Board of Directors to amend the Company's governing documents to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item (or, "withheld" in the case of board elections). This policy shall apply to all matters unless shareholders have expressly approved a higher threshold for specific types of items."

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rules 14a-8(i)(1), 14a-8(i)(2) and 14a-8(i)(6) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(1) provides that a registrant may omit a stockholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." Rule 14a-8(i)(6) allows a proposal to be omitted if "the company would lack the power or authority to implement the proposal." In this connection, you have requested our opinion as to whether, under Delaware law, (i) the Proposal is a proper subject for action by the Company's stockholders, (ii) the implementation of the Proposal, if adopted by the Company's stockholders, would violate Delaware law, and (iii) the Company has the power and authority to implement the Proposal.

For the reasons set forth below, the Proposal, in our opinion, (i) would violate Delaware law if implemented, (ii) is beyond the power and authority of the Company to implement, and (iii) is not a proper subject for stockholder action under Delaware law.

DISCUSSION

I. The Proposal would violate Delaware law if implemented.

The Company is a Delaware corporation governed by the General Corporation Law of the State of Delaware (the "General Corporation Law"). The Staff of the Division of Corporation Finance (the "Staff") has previously permitted the exclusion of stockholder proposals, like the Proposal, that, if implemented, would require a Delaware corporation to mandate a stockholder voting standard for corporate action that is lower than the standard required by the General Corporation Law based on the proposal violating Delaware law.[1] In

[1] *See AT&T Inc.* (Feb. 12, 2010) (permitting exclusion of stockholder proposal under Rule 14a-8(i)(2) where proposal sought implementation of voting standard for stockholder action by written consent that was less than would be required under the General Corporation Law for

addition, the Staff also recently permitted exclusion of a stockholder proposal submitted by the Proponent's representative to an Ohio corporation that was identical to the Proposal on the grounds that it required implementation of a voting standard that would violate similar statutory voting standards under Ohio corporate law.[2] For the very same reasons, the Proposal submitted to the Company by the Proponent would violate Delaware law. Specifically, the Proposal would require the Company's Board of Directors (the "Board") to seek an amendment to the Certificate of Incorporation and/or Bylaws that, if implemented, would violate Delaware law in that it would purport to enable stockholders to authorize the taking of certain corporate actions by the vote of a simple majority of the votes cast FOR and AGAINST the action, rather than the minimum vote required by the General Corporation Law to authorize such actions.

Although stockholders could in some instances authorize the taking of corporate action by a simple majority of the votes cast on the matter,[3] there are a number of actions that, under the General Corporation Law, mandate approval by stockholders representing a majority or more of the outstanding shares entitled to vote on the matter. For example, the General Corporation Law provides that: (i) conversion of a corporation to a limited liability company, statutory trust, business trust or association, real estate investment trust, common-law trust or partnership (limited or general) must be approved by all outstanding shares of stock of the corporation, whether voting or nonvoting;[4] (ii) any transfer or domestication of a Delaware corporation to a foreign jurisdiction must be approved by all outstanding shares of stock of the corporation, whether voting or nonvoting;[5] (iii) a proposal to dissolve the corporation, if not previously approved by the board, must be authorized by the written consent of all of the stockholders entitled to vote thereon;[6] and (iv) any election by an existing stock corporation to be treated as a "close corporation" must be approved by "at least 2/3 of the shares of each class of

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certain actions); *Bank of America Corporation* (Jan. 13, 2010) (same); *Pfizer Inc.* (Dec. 21, 2009) (same); *Kimberly-Clark Corporation* (Dec. 18, 2009) (same).

[2] *See The J.M. Smucker Company* (June 22, 2012) (permitting exclusion because certain provisions of the Ohio Revised Code require a greater stockholder voting standard than the standard set forth in the proposal for taking certain corporate actions).

[3] For example, Section 216 of the General Corporation Law permits a Delaware corporation to specify in its certificate of incorporation or bylaws the stockholder vote necessary for the transaction of business at any meeting of stockholders, which could be set at a simple majority of the votes cast on the matter. However, Section 216 also provides that a corporation's authority to specify such a voting standard is expressly subject to the stockholder vote required by the General Corporation Law for a specified action. *See* 8 *Del. C.* § 216. Indeed, Section 3.03 of the Bylaws of the Company currently provides that, subject to certain exceptions, directors of the Company shall be elected "by the vote of the majority of the votes cast at any meeting for the election of directors at which a quorum is present."

[4] *Id.* § 266(b).

[5] *Id.* § 390(b).

[6] *Id.* § 275(c).

stock of the corporation which are outstanding."[7] In addition to the foregoing, the General Corporation Law requires a number of corporate actions be adopted or approved by the affirmative vote of a majority of the outstanding stock entitled to vote thereon, such as: (i) the removal of a director without cause;[8] (ii) an amendment to a corporation's certificate of incorporation after the corporation has received payment for its stock;[9] (iii) an agreement of merger;[10] (iv) the sale of all or substantially all of the corporation's assets;[11] and (v) a proposal to dissolve the corporation, if previously approved by the board.[12]

Contrary to the request set forth in the Proposal, the Board could not take such steps as would be necessary "to provide that all matters presented to shareholders shall be decided by a simple majority of the shares voted FOR and AGAINST an item" with respect to any of the matters set forth above because, under the General Corporation Law, these corporate actions require the vote of stockholders representing more than a simple majority of the votes cast. The General Corporation Law does not permit a corporation to specify a *lower* voting standard with respect to the corporate actions for which a stockholder vote is specified. Specifically, Section 102(b)(4) of the General Corporation Law permits a Delaware corporation to include in its certificate of incorporation provisions that increase the requisite vote of stockholders otherwise required under the General Corporation Law.[13] That subsection provides that "the certificate of incorporation may . . . contain . . . [p]rovisions requiring for any corporate action, the vote of a larger portion of the stock . . . than is required by [the General Corporation Law]."[14] While Section 102(b)(4) permits certificate of incorporation provisions to require a *greater* vote of stockholders than is otherwise required by the General Corporation Law, that subsection does not (nor does any other section of the General Corporation Law) authorize a corporation to provide for a *lesser* vote of stockholders than is otherwise required by the General

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[7] *Id.* § 344; *see also id.* § 203(a)(3) (requiring a business combination to be approved "by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder").

[8] *Id.* § 141(k). Section 141(k) expressly provides that "[a]ny director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors." In addition, Section 141(k) further provides that "[w]henever the holders of any class or series are entitled to elect 1 or more directors by the certificate of incorporation, this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole."

[9] *Id.* § 242(b)(1) (requiring "a majority of the outstanding stock entitled to vote thereon").

[10] *Id.* § 251(c) (requiring "a majority of the outstanding stock of the corporation entitled to vote thereon").

[11] *Id.* § 271(a) (requiring "a majority of the outstanding stock of the corporation entitled to vote thereon").

[12] *Id.* § 275(b) (requiring "a majority of the outstanding stock of the corporation entitled to vote thereon").

[13] *Id.* § 102(b)(4).

[14] *Id.*

Corporation Law. Any such provision specifying a lesser vote than the minimum vote required by the General Corporation Law would, in our view, be invalid and unenforceable under Delaware law.[15]

Moreover, under Delaware law, actions that mandate approval by stockholders representing a majority or more of the outstanding shares entitled to vote on the matter, require that abstentions, broker non-votes and shares absent from the meeting of stockholders must be counted as votes against the action. Because the Proposal would treat abstentions, broker non-votes and shares absent from the meeting of stockholders as having no effect on the outcome of the votes on such actions, the Proposal violates Delaware law.

The Proposal would also violate Delaware law in that it would purport to enable stockholders to amend the Certificate of Incorporation even in those cases where the General Corporation Law expressly requires the separate vote of the holders of a specific class or series of stock. Under the Certificate of Incorporation, the Company has authorized two classes of capital stock: Common Stock and Preferred Stock.[16] Indeed, pursuant to the Certificate of Incorporation, the Company has designated several series of Preferred Stock.[17] The holders of the Company's outstanding Common Stock and Preferred Stock, therefore, are entitled to the separate class voting rights applicable under Section 242(b)(2) of the General Corporation Law. That subsection provides, in relevant part, as follows:

> The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the aggregate number of authorized shares of such class, increase or decrease the par value of the shares of such class, or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.[18]

The Proposal, if implemented, would purport to enable stockholders to act by a simple majority of the votes cast to approve any action, including an amendment to the Certificate of Incorporation that would, for example, alter the powers, preferences or special rights of the Preferred Stock or Common Stock so as to affect them adversely, without regard for the separate class vote required by Section 242(b)(2). To the extent the Proposal purports to eliminate this statutorily-required vote, it would, in our view, also violate the General Corporation Law.

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[15] *See, e.g., Telvest, Inc. v. Olson*, 1979 WL 1759, at *1 (Del. Ch. Mar. 8, 1979) (referring to DGCL vote thresholds as "minimum requirements").

[16] *See* The Charles Schwab Corporation, Quarterly Report (Form 10-Q), Ex. 3.11 (Nov. 7, 2011).

[17] *See* The Charles Schwab Corporation, Current Report (Form 8-K), Ex. 3.15 (Jan. 24, 2012); The Charles Schwab Corporation, Current Report (Form 8-K), Ex. 3.1 (June 6, 2012).

[18] 8 *Del. C.* § 242(b)(2).

II. The Proposal is beyond the power and authority of the Company to implement.

As set forth in Section I above, the Proposal, if implemented, would violate Delaware law. Therefore, in our view, the Company lacks the power and authority to implement the Proposal. Indeed, the Staff has repeatedly recognized that companies do not have the power and authority to implement proposals that violate state law.[19]

III. The Proposal is not a proper matter for stockholder action under Delaware law.

As set forth in Sections I and II above, the Proposal, if implemented, would violate Delaware law and the Company lacks the power and authority to implement the Proposal. Accordingly, the Proposal, in our view, is an improper subject for stockholder action under Delaware law.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law, that the Company lacks the power and authority to implement the Proposal and that the Proposal is not a proper subject for action by the stockholders of the Company under Delaware law.

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

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

MG/NS

[19] *See, e.g., Schering-Plough Corp.* (Mar. 27, 2008); *Bank of America Corp.* (Feb. 26, 2008); *Xerox Corp.* (Feb. 23, 2004); *Burlington Resources Inc.* (Feb. 7, 2003).