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

DIVISION OF
CORPORATION FINANCE

February 14, 2018

David S. Maltz
Duke Energy Corporation
david.maltz@duke-energy.com

Re: Duke Energy Corporation
Incoming letter dated December 28, 2017

Dear Mr. Maltz:

This letter is in response to your correspondence dated December 28, 2017 and February 13, 2018 concerning the shareholder proposal (the "Proposal") submitted to Duke Energy Corporation (the "Company") by John Chevedden (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated January 1, 2018, January 8, 2018, January 12, 2018, January 19, 2018, January 28, 2018, February 4, 2018 and February 13, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden
***

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

February 14, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Duke Energy Corporation
Incoming letter dated December 28, 2017

The Proposal requests that the board take each step necessary so that each voting requirement in the Company's charter and bylaws that calls for a greater than simple majority vote be eliminated and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary, this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). In this regard, we note your representation that the Company will provide shareholders at its 2018 annual meeting with an opportunity to approve an amendment to its certificate of incorporation to reduce the 80% requirement in Article Seventh of the Company's certificate to a simple-majority requirement. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(10). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

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

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

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

JOHN CHEVEDDEN
***

February 13, 2018

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

 # 7 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
Management Incompetence
John Chevedden

Ladies and Gentlemen:

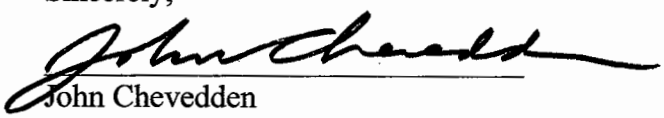
This is in regard to the December 28, 2017 no-action request and the board's no commitment approval of a shareholder vote.

The board made no commitment to obtain the necessary 80% vote on its just announced proposal and implicitly claims that it can give as much attention to approval of the board proposal as it will give to the routine 2018 ratification of its auditors.

This is in contrast to what a company can do in obtaining a vote if it wants to. In the span of a year another company increased the approval of its executive pay from 61% to 90% in part through the use of a special solicitation – but no such luck in regard to the Duke Energy Corporation board's low priority proposal just announced.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

Proposal: Advisory Vote on Executive Compensation

Proxy Year:	2012
Date Filed:	Feb 24, 2012
Annual Meeting Date:	Apr 11, 2012
Proposal Type:	Management

Proponent:

Votes For:	421,352,984
Votes Against:	269,610,948
Abstentions:	12,146,951
Total Votes:	703,110,883
Broker Non-Votes:	83,282,793

Won Simple Majority Vote?	No
VotesFor/VotesFor+Against:	61.00%
VotesFor/TotalVotes:	61.65%
VotesFor/Shares Outstanding:	46.29%

61%

Proposal: Advisory Vote on Executive Compensation

Proxy Year:	2013
Date Filed:	Mar 15, 2013
Annual Meeting Date:	Apr 29, 2013
Proposal Type:	Management

Proponent:

Votes For:	644,664,942
Votes Against:	70,017,265
Abstentions:	7,751,302
Total Votes:	722,433,509
Broker Non-Votes:	80,272,721

Won Simple Majority Vote?	No
VotesFor/VotesFor+Against:	90.00%
VotesFor/TotalVotes:	90.31%
VotesFor/Shares Outstanding:	70.20%

90%

United Technologies Corporation
One Financial Plaza
Hartford, CT 06101

United Technologies

April 9, 2013

Dear Shareowner,

The 2013 Annual Meeting of Shareowners of United Technologies Corporation will take place on April 29. By now, you should have received UTC's 2013 Proxy Statement,* which contains information about the **three proposals** that shareowners are being asked to vote on at this year's meeting. If you have already cast your vote, thank you very much for your participation. **If you have not yet had the opportunity to vote, we encourage you to review the Proxy Statement and to vote your UTC shares as soon as possible.**

You can vote by completing and mailing back the enclosed voting card, or you can vote by telephone or online by following the instructions on the enclosed voting card.

UTC's Board of Directors is recommending that you vote FOR all three proposals on this year's agenda.

Proposal 1 asks for your support in electing the twelve director nominees named in the Proxy Statement. *Please see pages 1 through 8 in the Proxy Statement for information on the experience and qualifications of each nominee.*

As you consider these director nominees, please take into account UTC's recent and longer-term performance. Under the oversight of the Board of Directors, UTC has achieved solid earnings and shareowner value while also executing strategic initiatives intended to build long-term sustainable growth. For 2012, UTC reported diluted earnings per share from continuing operations of $5.35 on net sales of $57.7 billion combined with strong cash flow performance *(please see pages 21-24 of the Proxy Statement for a discussion of UTC's financial performance)*. UTC increased the Common Stock dividend 11.5%. *2012 marks the 76th consecutive year that UTC shareowners have received dividends on their shares.* We achieved this financial performance in the same year that UTC completed the $18.3 billion acquisition of Goodrich Corporation, the largest aerospace acquisition ever. The Company believes this acquisition significantly enhances UTC's reach in the aerospace market and increases the opportunity for growth.

As a shareowner, you may be particularly pleased to know that UTC's total shareowner return (TSR) for 2012 was 15%, substantially exceeding the TSR for the Dow Jones Industrials (10%) and slightly below the TSR for the S&P 500 (16%). For the ten-year period ending on December 31, 2012, UTC's cumulative TSR was 225%, more than double either the Dow Jones Industrials or the S&P 500.

By voting to elect the current nominees, you will help ensure that UTC's Board continues to have the right mix of experience and qualifications to meet the challenges of tomorrow.

* UTC's **2013 Proxy Statement** and **Annual Report** for 2012 are both available online at www.proxyvote.com.

2012
Earnings per share from continuing operations:

$5.35

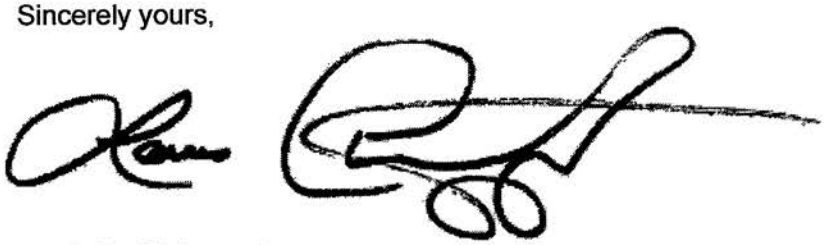
Proposal 2 asks you to support the appointment of PricewaterhouseCoopers LLP as independent auditor for 2013. The Audit Committee of the Board believes that PricewaterhouseCoopers has experience and insight into the Company's operations and systems that enhance their ability to discharge the important function of independent audit review. *Please see page 65 of the Proxy Statement for details on this proposal.*

Proposal 3 asks you to approve, on an advisory basis, the compensation of UTC's named executive officers. We believe UTC's strong financial and TSR performance, discussed above, reflect the steady focus of the Board's Committee on Compensation on the goal of aligning UTC's compensation strategies with shareowner interests. UTC's compensation program has also enabled the Company to attract and retain highly talented executives. Shareowners should know that the Compensation Committee keeps abreast of important trends and benchmarks relating to executive compensation and updates UTC's compensation program when appropriate. In fact, during 2012 the Committee modified UTC's compensation strategies in a number of significant ways to ensure that the Company is following best practices and to further enhance the alignment of UTC's compensation program with the interests of UTC shareowners. *Please see pages 21-51 of the Proxy Statement to learn more about these changes.*

Based on the important compensation changes that UTC implemented in 2012, and its proven track record of adopting effective executive compensation strategies and creating long-term value for shareowners, the Board recommends that you vote FOR Proposal 3.

YOUR VOTE IS VERY IMPORTANT. PLEASE SUBMIT YOUR PROXY OR VOTING INSTRUCTIONS AS SOON AS POSSIBLE, WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING.

Sincerely yours,



Louis R. Chênevert
Chairman & Chief Executive Officer

2012
Sales from
continuing
operations:

$57.7 billion

Acquired
Goodrich
Corporation:

$18.3 billion

DUKE ENERGY.

David S. Maltz
Vice President, Legal and
Assistant Corporate Secretary

550 S. Tryon Street
Charlotte, NC 28202

Mailing Address:
Mail Code DEC45A/ P.O. Box 1321
Charlotte, NC 28201

o: 704.382.3477
f: 980.373.5201

david.maltz@duke-energy.com

February 13, 2018

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

Re: Omission of Shareholder Proposal Submitted By John Chevedden

Dear Sir or Madam:

In a letter dated December 28, 2017 (the "No-Action Request Letter"), Duke Energy Corporation (the "Corporation") requested confirmation that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission will not recommend any enforcement action if the Corporation omits from its proxy solicitation materials ("Proxy Materials") for its 2018 Annual Meeting of Shareholders (the "2018 Annual Meeting") a proposal (the "Proposal") submitted to the Corporation by John Chevedden. In the No-Action Request Letter, the Corporation explained that it believes that the Proposal can be properly omitted from its Proxy Materials pursuant to Rule 14a-8(i)(10) because the Proposal will be substantially implemented by the inclusion of a proposal to amend Article Seventh of the Corporation's Amended and Restated Certificate of Incorporation to reduce the 80% voting requirement to a majority of the outstanding shares of stock entitled to vote (the "Corporation Proposal") and a recommendation to shareholders to vote for such amendment in the Corporation's Proxy Materials. At the time the Corporation submitted its No-Action Request Letter, we noted that this would be formally approved by the Corporation's Board of Directors at a later date.

The purpose of this letter is to notify the Staff that, at a meeting on February 12, 2018, the Corporate Governance Committee approved the recommendation that the Corporation's Board of Directors' approve the Corporation Proposal to be included in the Proxy Materials for the 2018 Annual Meeting. Attached as Exhibit A is the amendment to Article Seventh of the Corporation's Amended and Restated Certificate of Incorporation which is being recommended to shareholders at the 2018 Annual Meeting. Accordingly, the Corporation respectfully requests that the Staff advise that it will not recommend any enforcement action if the Corporation excludes the Proposal from its Proxy Materials for the 2018 Annual Meeting. Furthermore, because the inclusion of the Corporation Proposal in the Proxy Materials necessitates the filing of a preliminary proxy statement, the Corporation respectfully requests that the Staff provide its advice on this matter prior to March 2, 2018. If the Staff does not concur with the Corporation's

position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the issuance of a response. In such case, or if you have any questions or desire any further information, please contact the undersigned at (704) 382-3477.

Very truly yours,

David S. Maltz

cc: Julia S. Janson, Executive Vice President, External Affairs, Chief Legal Officer and Corporate Secretary
John Chevedden

EXHIBIT A

ARTICLE SEVENTH

Amendment of Certificate of Incorporation

The Corporation reserves the right to supplement, amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Certificate of Incorporation, and all rights conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing, this ARTICLE SEVENTH and sections (b) and (d) of ARTICLE FIFTH may not be supplemented, amended, altered, changed, or repealed in any respect, nor may any provision inconsistent therewith be adopted, unless such supplement, amendment, alteration, change or repeal is approved by the affirmative vote of the holders of ~~at least 80%~~ a majority of the combined voting power of the then outstanding shares of stock of all classes of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

JOHN CHEVEDDEN
***

February 4, 2018

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

 # 6 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
Management Incompetence
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request.

The company failed to acknowledge its incompetence in its failed 2017 approval attempt in regard its own proposal just like this proposal.

There was no excuse for such company incompetence.

Management now seeks to associate the Staff with a rerun of its 2017 incompetence.

The company objection to "take each step necessary" highlights the fact that the company has not claimed that its planned replay of a simple majority vote proposal is supported by any company enumeration of one extra good faith step it took previously to achieve shareholder approval when a challenging level of support (80%) was required.

The company in effect says that it should be excused from publishing this rule 14a-8 proposal if the company simply gives as much effort to obtaining the challenging 80% approval (that was set before the tenure of any of its current directors) as it devotes to obtaining the routine 51% ratification of its auditors.

The company failed to be upfront with the Staff and admit to its 2017 display of incompetence in submitting a doomed-to-fail company proposal in response to a rule 14a-8 proposal on the same topic as this 2018 proposal.

A way to partially implement this proposal – that is a long way from implementing this proposal – but still goes further than the planned company response, would be for the company to provide for a binding vote and an advisory vote on any issue that would require an 80%-vote of all shares in existence.

The words of the company request are not supported. The company request unequivocally states: "The Proposal will be substantially implemented."

"Will" expresses an inevitable event.
"Substantially" means to a great or significant extent.
"Implemented" means put into effect.

Thus based on the unequivocally company words there is no possibility of a completely failed ballot item.
Yet the company has a recent history of ballot failure.
The company has no plan to increase the number of positive votes for its proposal compared to its dismal 2017 ballot failure on this exact same topic.

Thus the words of the company request are not supported.

The company cited 2 alleged precedents under its rule 14a-8(i)(3) section that involved rule 14a-8(i)(10) only: The Brinks Company and The Southern Company.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

JOHN CHEVEDDEN
***

January 28, 2018

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

 # 5 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
Management Incompetence
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request.

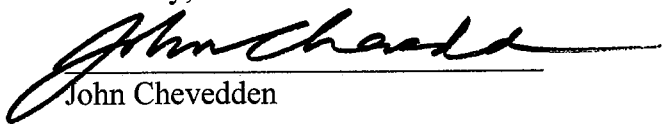
The company failed to acknowledge its incompetence in its failed 2017 approval attempt in regard its own proposal.

There was no excuse for such company incompetence.

Management now seeks to associate the Staff a rerun of its 2017 incompetence.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

JOHN CHEVEDDEN
***

January 19, 2018

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

 # 4 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
How to Succeed in No-Action Process with Doomed-to-Fail Management Move
John Chevedden

Ladies and Gentlemen:

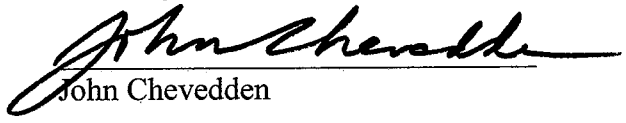
This is in regard to the December 28, 2017 no-action request.

The company objection to "take each step necessary" highlights the fact that the company has not claimed that its planned replay of a simple majority vote proposal is supported by any company enumeration of one extra good faith step it took previously to achieve shareholder approval when a challenging level of support (80%) was required.

The company in effect says that it should be excused from publishing this rule 14a-8 proposal if the company simply gives as much effort to obtaining the challenging 80% approval (that was set before the tenure of any of its current directors) as it devotes to obtaining the 51% ratification of its auditors.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,



John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

JOHN CHEVEDDEN
***

January 12, 2018

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

 # 3 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
How to Succeed in No-Action Process with Doomed-to-Fail Management Move
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request.

The company failed to be upfront with the Staff and admit to its 2017 display of negative expertise in submitting a doomed-to-fail company proposal in response to a rule 14a-8 proposal on the same topic as the 2018 proposal.

A way to partially implement this proposal – that is a long way from implementing this proposal – but still goes further than the planned company response, would be for the company to provide for a binding vote and an advisory vote on any issue that would require an 80% vote of all shares in existence.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

JOHN CHEVEDDEN
***

January 8, 2018

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

 # 2 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
How to Succeed in No-Action Process with Doomed-to-Fail Management Move
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request.

The company request is not supported. The company request unequivocally states:
"The Proposal will be substantially implemented."

"Will" expresses an inevitable event.
"Substantially" means to a great or significant extent.
"Implemented" means put into effect.

Thus based on the unequivocally company words there is no possibility of a completely failed ballot item.
Yet the company has a recent history of ballot failure.
The company has no plan to increase the number of positive votes for its proposal compared to its dismal 2017 ballot failure on this exact same topic.
The company had no discussion of even a small partial ballot success.

Thus the company request is not supported.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

the Proposal will be substantially implemented.

JOHN CHEVEDDEN
***

January 1, 2018

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

 # 1 Rule 14a-8 Proposal
Duke Energy Corporation (DUK)
Simple Majority Vote
How to Succeed in No-Action Process with Doomed-to-Fail Company Move
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 28, 2017 no-action request.

The company failed to be upfront with the Staff and admit to its 2017 display of negative expertise in submitting a doomed-to-fail company proposal in response to a rule 14a-8 proposal.

The company cited 2 alleged precedents under its rule 14a-8(i)(3) section that involved rule 14a-8(i)(10) only: *The Brinks Company* and *The Southern Company*.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2018 proxy.

Sincerely,

John Chevedden

cc: David S. Maltz <david.maltz@duke-energy.com>

[DUK: Rule 14a-8 Proposal, November 19, 2017, Revised November 22, 2017]11-22
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. It is important that our company take each step necessary to adopt this proposal topic completely.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority. In other words a 1%-minority could have the power to prevent shareholders from improving the quality our corporate governance.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Duke shareholders already voted 97% in favor of the topic of this proposal at our 2017 annual meeting. Sadly our top management did not put enough horsepower behind their failed 2017 proposal on the topic of this proposal. If the failed 2017 management proposal would have boosted executive pay – one can bet a lot more management effort would have been devoted to it.

It is important to adopt the topic of this proposal so that other issues of accountability to shareholders can then be addressed more thoroughly. For instance Michael Browning may not be the best-qualified person to be Lead Director. As Chairman of the corporate governance committee, he could be the person most responsible the lackluster 2017 management effort to adopt the topic of this proposal. There is shareholder dissatisfaction with Mr. Browning because he received up to 4-times as many negative votes as other Duke directors. Plus Mr. Browning had an oversized influence on our board since he had 3 seats on the 3 most important board committees.

There also seems to be a problem with assigning directors to the proper committees. The 4 directors who received the highest negative votes controlled 75% of the Executive Pay Committee and 40% of the Audit Committee.

Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

Please vote to enhance shareholder oversight of management:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

DUKE ENERGY.

David S. Maltz
Vice President, Legal and
Assistant Corporate Secretary

550 S. Tryon Street
Charlotte, NC 28202

Mailing Address:
Mail Code DEC45A/ P.O. Box 1321
Charlotte, NC 28201

o: 704.382.3477
f: 980.373.5201

david.maltz@duke-energy.com

December 28, 2017

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

Re: Omission of Shareholder Proposal Submitted By John Chevedden

Dear Sir or Madam:

Pursuant to Rule 14a-8(j)(1) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), Duke Energy Corporation (the "Corporation") requests confirmation that the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission will not recommend any enforcement action if the Corporation omits from its proxy solicitation materials ("Proxy Materials") for its 2018 Annual Meeting of Shareholders (the "2018 Annual Meeting") a proposal (the "Proposal") submitted to the Corporation by John Chevedden (the "Proponent").

This letter provides an explanation of why the Corporation believes that it may exclude the Proposal and includes the attachments required by Rule 14a-8(j). In accordance with *Staff Legal Bulletin* No. 14D (Nov. 7, 2008), this letter and its exhibits are being delivered by e-mail to shareholderproposals@sec.gov. A copy of this letter and its attachments are also being sent on this date to the Proponent in accordance with Rule 14a-8(j), informing the Proponent of the Corporation's intention to omit the Proposal from the 2018 Annual Meeting Proxy Materials. We also wish to take this opportunity to inform the Proponent that if he submits additional correspondence to the Staff with respect to the Proposal, a copy of that correspondence should also be furnished to the Corporation, addressed to the undersigned, pursuant to Exchange Act Rule 14a-8(k). This letter is being submitted not less than 80 days before the filing of the Corporation's Proxy Materials, which the Corporation intends to file on or around March 22, 2018.

THE PROPOSAL

The Proposal requests that:

> "our board take each step necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. It is important that our company take each step necessary to adopt this proposal topic completely."

A copy of the Proposal and supporting statement is attached hereto as Exhibit A.

REASONS FOR EXCLUSION OF PROPOSAL

1. **The Corporation believes that the Proposal may be properly omitted pursuant to Rule 14a-8(i)(10) because the Proposal will be substantially implemented.**

Rule 14a-8(i)(10) permits the exclusion of a proposal that the Corporation has substantially implemented. The Proposal asks for the board "to take each step necessary" to remove the supermajority voting requirements in the Corporation's charter and bylaws. Prior to the mailing of the Corporation's Proxy Materials, the Board of Directors will formal approve an amendment to the Amended and Restated Certificate of Incorporation (the "Certificate") to reduce the 80% voting requirement in Article Seventh of the Corporation's Certificate of Incorporation to a simple majority of the outstanding shares of stock entitled to vote and will also recommend in the Proxy Materials that shareholders approve such amendments at the 2018 Annual Meeting of Shareholders.

2. **The Corporation believes that the Proposal may be properly omitted pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague and indefinite so as to be inherently misleading.**

DISCUSSION

1. **Article Seventh of the Corporation's Certificate is the only provision in the Corporation's Certificate or By-Laws which requires greater than a simple majority vote of the shareholders to amend the provision.**

Article Seventh states that "this ARTICLE SEVENTH and sections (b) and (d) of ARTICLE FIFTH may not be supplemented, amended, altered, changed or repealed in any respect, nor may any provision inconsistent therewith be adopted, unless such supplement, amendment, alteration, change or repeal is approved by the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares of stock of all classes of the Corporation entitled to vote generally in the election of directors, voting together as a single class." Article Seventh also states that any other provision of the Certificate may be amended in accordance

with the laws of the State of Delaware. Section 242(b)(1) of the Delaware General Corporation Law provides that a corporation's certificate of incorporation may by amended by a majority vote of the outstanding shares entitled to vote.

Copies of the Certificate and By-Laws are attached as Exhibit B and Exhibit C to this no-action request. A copy of the proposed amendment to Article Seventh to remove the only supermajority requirements in the Certificate is attached hereto as Exhibit D.

The Staff has previously stated that Rule 14a-8(i)(10) was designed to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by the management..." *Exchange Act Release No. 12598* (July 7, 1976).

The Staff has consistently concurred that proposals calling for the elimination of supermajority voting provisions such as the one which is the subject of the Proposal are excludable under Rule 14a-8(i)(10) when corporations have taken steps to submit amendments to remove those provisions to shareholders at upcoming meetings. *See, e.g. Qualcomm* (Dec. 8, 2017; *The Southern Company* (Feb. 24, 2017); *The Southern Company* (Feb. 26, 2016); *The Brink's Company* (Feb. 5, 2015); *Visa Inc.* (Nov. 14, 2014); *Medtronic, Inc.* (June 13, 2013) (each concurring with the exclusion of a proposal to eliminate provisions in a corporation's governing documents which require a supermajority vote when the corporation's board approved amendments to the governing documents that would replace such provisions with a simple majority requirement.) Furthermore, in the cited examples, the Staff has also concurred that a proposal requesting that a board take each step necessary to amend a corporation's governing documents had been substantially implemented when the board lacked the authority to unilaterally adopt the amendments to a corporation's certificate of incorporation or bylaws but had submitted such amendments to the shareholders to approve. *See also AECOM* (Nov. 1, 2016); *McKesson Corp* (Apr. 8, 2011); *Applied Materials, Inc.* (Dec. 19, 2008). Because these matters are directly on point to the issue discussed herein, the Proposal is excludable under Rule 14a-8(i)(10) as it was in the cited examples.

Finally, the Staff has consistently concurred with the exclusion of a proposal under Rule 14a-8(i)(10) when a corporation notified the Staff that its board of directors intends to take certain formal actions that will substantially implement a proposal and then supplements its no-action request with a notification to the Staff after formal action has been taken by the board of directors. *See, e.g. AGL Resources Inc.* (Feb. 11, 2015); *The Brink's Company* (Feb. 5, 2015); *Visa, Inc.* (Nov. 14, 2014); *Starbucks Corp.* (Nov. 27, 2012). Because the Corporation's Board intends to formally approve the proposed amendment to the Certificate at its late February meeting and the Corporation has committed that it will notify the Staff once such formal approval has occurred, the Proposal may be excluded under Rule 14a-8(i)(10).

Conclusion. The Corporation believes that it may exclude the Proposal pursuant to Rule 14a-8(i)(10) because the Proposal is being substantially implemented by the Corporation through the inclusion of a proposal to be voted on by shareholders in the Corporation's Proxy Materials for the 2018 Annual Meeting to reduce the 80% requirement in Article Seventh of the Corporation's Certificate to a simple majority requirement.

2. **The Proposal may be excluded under Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading.**

The Proposal fails to define critical terms and otherwise provide guidance on what is necessary to implement it. The Staff has concurred many times that shareholder proposals that are vague and indefinite are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because shareholders cannot make an informed decision on the merits of a proposal without at least knowing what they are voting on. *See Staff Legal Bulletin No. 14B* (Sep. 15, 2004)(noting that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires.") Furthermore, the Staff has concurred that a shareholder proposal was sufficiently misleading so as to justify its exclusion when neither the shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. *Pfizer Inc.* (Dec.. 22, 2014).

The Staff has consistently concurred with the exclusion of proposals which do not define critical terms or phrases or otherwise provide guidance on what is required to implement the proposals. In *Bank of America Corp.* (Feb. 25, 2008), the Staff concurred with the exclusion of a proposal requesting that the corporation amend its policies to "observe a moratorium on all financing, investment and further involvement in activities that support MTR" (mountain top removal) projects but did not define what would constitute "further involvement" and "activities that support MTR [projects]." *See also Eastman Kodak Co.* (Mar. 3, 2003)(proposal seeking to cap executive salaries at $1 million, including bonus, perks and options, failed to define various terms and how options were to be valued and was therefore excludable) and *American Telephone and Telegraph Company* (Jan. 12, 1990) (proposal seeking to prohibit a corporation from "interfering" with "government policy" of foreign governments was excluded as it would require, if implemented, subjective determinations regarding what is considered to be "interference" and "government policy" as well as when the proposal would apply).

The Proposal fails to give necessary details to explain what is meant by the language "take each step necessary." Consequently, shareholders cannot make an informed decision on what they are being asked to vote on and the Corporation would be unable to determine whether it has been responsive in implementing the Proposal. This ambiguity could result in a great amount of interpretation and differing conclusions by the Corporation and its shareholders.

Proponent has previously argued in several of the previously cited examples that the Board did not take each step necessary and yet failed to include in the Proposal what he believes to be the all the steps necessary to properly implement the Proposal. In *The Brinks Company* (*avail.* Feb. 5, 2015), the Proponent argued that hiring a proxy solicitor to advise on the most favorable approach to take was necessary to take all necessary steps. In *The Southern Company* (*avail.* Feb. 24, 2017), the Proponent implied that the company should have hired a proxy solicitor, put more effort into its solicitation for the matter, and even adjourned their long-scheduled annual shareholder meeting when the matter failed to receive the number of shares necessary to pass. Without more information in the Proposal detailing what the Proponent actually believes to be required to "take each necessary step," As the Proponent, himself has demonstrated through his prior letters to the SEC, "each necessary step" is a vague and misleading standard. Without more

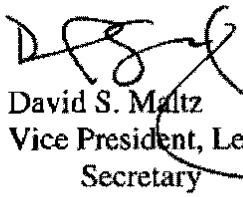
information in the Proposal detailing what specific actions are necessary to be deemed "each necessary step," the shareholders cannot know what, in particular, they are being asked to approve and therefore cannot make an informed decision regarding their vote on this matter.

Conclusion. For the reasons stated above, we respectfully submit that the Proposal is impermissibly vague and indefinite so as to be inherently misleading and should therefore be excluded from the Corporation's Proxy Materials for the 2018 Annual Meeting pursuant to Rule 14a-8(i)(3).

CONCLUSION

The Corporation respectfully requests that the Staff advise that it will not recommend any enforcement action if the Corporation excludes the Proposal from its Proxy Materials pursuant to 14a-8(i)(10). If the Staff does not concur with the Corporation's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the issuance of a response. In such case, or if you have any questions or desire any further information, please contact the undersigned at (704) 382-3477.

Very truly yours,



David S. Maltz
Vice President, Legal and Assistant Corporate Secretary

cc: Julia S. Janson, Executive Vice President, External Affairs, Chief Legal Officer and Corporate Secretary
John Chevedden

EXHIBIT A

(See attached copy of the Proposal.)

JOHN CHEVEDDEN

* ***

*** ***

Ms. Julie S. Janson
Corporate Secretary
Duke Energy Corporation (DUK)
550 S. Tryton Street
Charlotte, NC 28202
PH: 704-382-3853
FX: 704 382-3814

REVISED 22 NOV 2017

Dear Ms. Janson,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial captializtion of our company.

This proposal is for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal by email to ***

Sincerely,

John Chevedden

November 19, 2017
Date

cc: David S. Maltz <david.maltz@duke-energy.com>
Assistant Corporate Secretary
PH: 704-382-3477
FX: 980-373-5201
Nancy Wright <Nancy.wright@duke-energy.com>
Associate General Counsel
PH: 704-382-9151
FX: 980-373-5265
Joseph P. Crapster <Joseph.Crapster@duke-energy.com>

[DUK: Rule 14a-8 Proposal, November 19, 2017, Revised November 22, 2017]11-22
[This line and any line above it – *Not* for publication.]

Proposal [4] – Simple Majority Vote

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. It is important that our company take each step necessary to adopt this proposal topic completely.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority. In other words a 1%-minority could have the power to prevent shareholders from improving the quality our corporate governance.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. The proponents of these proposals included Ray T. Chevedden and William Steiner.

Duke shareholders already voted 97% in favor of the topic of this proposal at our 2017 annual meeting. Sadly our top management did not put enough horsepower behind their failed 2017 proposal on the topic of this proposal. If the failed 2017 management proposal would have boosted executive pay – one can bet a lot more management effort would have been devoted to it.

It is important to adopt the topic of this proposal so that other issues of accountability to shareholders can then be addressed more thoroughly. For instance Michael Browning may not be the best-qualified person to be Lead Director. As Chairman of the corporate governance committee, he could be the person most responsible the lackluster 2017 management effort to adopt the topic of this proposal. There is shareholder dissatisfaction with Mr. Browning because he received up to 4-times as many negative votes as other Duke directors. Plus Mr. Browning had an oversized influence on our board since he had 3 seats on the 3 most important board committees.

There also seems to be a problem with assigning directors to the proper committees. The 4 directors who received the highest negative votes controlled 75% of the Executive Pay Committee and 40% of the Audit Committee.

Shareowners are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

Please vote to enhance shareholder oversight of management:
Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

John Chevedden, *** sponsors this proposal.

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
***

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

November 20, 2017

John R. Chevedden
***

To Whom It May Concern:

This letter is provided at the request of Mr. John R. Chevedden, a customer of Fidelity Investments.

Please accept this letter as confirmation that as of the date of this letter, Mr. Chevedden has continuously owned no fewer than the share quantity listed in the following table in each of the following securities, since October 1, 2016:

Security name	CUSIP	Trading symbol	Share quantity
Duke Energy Corp.	26441C204	DUK	50
DTE Energy Company	233331107	DTE	50
Huntington Ingalls Industries, Inc.	446413106	HII	30
L3 Technologies, Inc.	502413107	LLL	50
Eastman Chemical Co.	277432100	EMN	50
Bank of America Corp.	060505104	BAC	200

The securities referenced in the preceding table are registered in the name of National Financial Services LLC, a DTC participant (DTC number: 0226) and Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue, please feel free to contact me by calling 800-397-9945 between the hours of 8:30 a.m. and 5:00 p.m. Central Time (Monday through Friday) and entering my extension 15838 when prompted.

Sincerely,

George Stasinopoulos
Personal Investing Operations

Our File: W644869-20NOV17

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

EXHIBIT B

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
DUKE ENERGY CORPORATION

DUKE ENERGY CORPORATION, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the corporation is Duke Energy Corporation. The name under which the corporation was originally incorporated was Deer Holding Corp. The name of the corporation was changed to Duke Energy Holding Corp. on June 21, 2005. The original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on May 3, 2005.

2. This Amended and Restated Certificate of Incorporation, having been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL") and by the approval of the stockholders of the Corporation in accordance with Section 211 of the DGCL, restates and integrates and further amends the provisions of the Amended and Restated Certificate of Incorporation as amended or supplemented heretofore. As so restated and integrated and further amended, the Amended and Restated Certificate of Incorporation (hereinafter, this "Certificate of Incorporation") reads as follows:

ARTICLE FIRST

Name

The name of the corporation is Duke Energy Corporation.

ARTICLE SECOND

Registered Office

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE THIRD

Purpose

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL.

ARTICLE FOURTH

Capital Stock

(a) The aggregate number of shares of stock that the Corporation shall have authority to issue is two billion forty-four million (2,044,000,000) shares, consisting of two billion (2,000,000,000) shares of Common Stock, par value $0.001 per share (the "Common Stock"), and forty-four million (44,000,000) shares of Preferred Stock, par value $0.001 per share (the "Preferred Stock").

(b) The Board of Directors of the Corporation shall have the full authority permitted by law, at any time and from time to time, to divide the authorized and unissued shares of Preferred Stock into one or more classes or series and, with respect to each such class or series, to determine by resolution or resolutions the number of shares constituting such class or series and the designation of such class or series, the voting powers, if any, of the shares of such class or series, and the preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of any such class or series of Preferred Stock to the full extent now or hereafter permitted by the law of the State of Delaware. The powers, preferences and relative, participating, optional and other special rights of each class or series of Preferred Stock and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other classes or series at any time outstanding.

(c) Subject to applicable law and the rights, if any, of the holders of any class or series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Common Stock at such times and in such amounts as the Board of Directors of the Corporation in its discretion shall determine. Nothing in this ARTICLE FOURTH shall limit the power of the Board of Directors to create a class or series of Preferred Stock with dividends the rate of which is calculated by reference to, and the payment of which is concurrent with, dividends on shares of Common Stock.

(d) In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, subject to the rights of the holders of any class or series of the Preferred Stock, the net assets of the Corporation available for distribution to stockholders of the Corporation shall be distributed pro rata to the holders of the Common Stock in accordance with their respective rights and interests. If the assets of the Corporation are not sufficient to pay the amounts, if any, owing to holders of shares of Preferred Stock in full, holders of all shares of Preferred Stock will participate in the

distribution of assets ratably in proportion to the full amounts to which they are entitled or in such order or priority, if any, as will have been fixed in the resolution or resolutions providing for the issue of the class or series of Preferred Stock. Neither the merger or consolidation of the Corporation into or with any other corporation, nor a sale, transfer or lease of all or part of its assets, will be deemed a liquidation, dissolution or winding up of the Corporation within the meaning of this paragraph, except to the extent specifically provided in any certificate of designation for any class or series of Preferred Stock. Nothing in this ARTICLE FOURTH shall limit the power of the Board of Directors to create a class or series of Preferred Stock for which the amount to be distributed upon any liquidation, dissolution or winding up of the Corporation is calculated by reference to, and the payment of which is concurrent with, the amount to be distributed to the holders of shares of Common Stock.

(e) Except as otherwise required by law, as otherwise provided herein or as otherwise determined by the Board of Directors as to the shares of any class or series of Preferred Stock, the holders of Preferred Stock shall have no voting rights and shall not be entitled to any notice of meetings of stockholders.

(f) Except as otherwise required by law and subject to the rights of the holders of any class or series of Preferred Stock, with respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of any outstanding shares of Common Stock shall vote together as a class, and every holder of Common Stock shall be entitled to cast thereon one vote in person or by proxy for each share of Common Stock standing in such holder's name on the books of the Corporation; provided, however, that, except as otherwise required by law, or unless provided in any certificate of designation for any class or series of Preferred Stock, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any class or series of Preferred Stock) or pursuant to applicable law. Subject to the rights of the holders of any class or series of Preferred Stock, stockholders of the Corporation shall not have any preemptive rights to subscribe for additional issues of stock of the Corporation and no stockholder will be permitted to cumulate votes at any election of directors.

ARTICLE FIFTH

Board of Directors

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(b) Except as otherwise fixed by or pursuant to provisions of ARTICLE FOURTH relating to the rights of the holders of any series of Preferred Stock, the number of directors of the Corporation shall not be less than nine (9) nor more than eighteen (18), as may be fixed from time to time by the Board of Directors.

(c) A director may be removed from office with or without cause; provided, however, that, subject to applicable law, any director elected by the holders of any series of Preferred Stock

may be removed without cause only by the holders of a majority of the shares of such series of Preferred Stock.

(d) Except as otherwise fixed by or pursuant to provisions of ARTICLE FOURTH relating to the rights of the holders of any series of Preferred Stock, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office until the next succeeding annual meeting of stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(e) Except as otherwise fixed by or pursuant to provisions of ARTICLE FOURTH relating to the rights of the holders of any series of Preferred Stock, the directors shall be elected by the holders of voting stock and shall hold office until the next annual meeting of stockholders and until their respective successors shall have been duly elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

(f) Election of directors need not be by written ballot unless the By-Laws so provide.

(g) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

ARTICLE SIXTH

Action by Stockholders; Books of the Corporation

(a) Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

(b) Written Consent. Certain actions required or permitted to be taken by the stockholders of the Corporation at an annual or special meeting of the stockholders may be effected without a meeting by the written consent of the holders of common stock of the Corporation (a "Consent"), but only if such action is taken in accordance with the provisions of this Article Sixth, the Corporation's By-laws and applicable law.

(i) Record Date. The record date for determining such stockholders entitled to consent to corporate action in writing without a meeting shall be as fixed by the Board of Directors or as otherwise established under this Article Sixth. Any holder of common stock of the Corporation seeking to have the stockholders authorize or take corporate action by Consent shall, by written request addressed to the secretary of the Corporation and delivered to the Corporation's principal executive offices and signed by holders of record at the time such request is delivered representing at least 20 percent (20%) of the outstanding shares of common stock of the Corporation, request that a record date be fixed for such purpose. The written request must contain the information set forth in paragraph (b)(ii) of this Article Sixth. Following delivery of the request, the Board of Directors shall, by the later of (x) 20 days after delivery of a valid request to set a record date and (y) 5 days after delivery of any information required by the Corporation to determine the validity of the request for a record date or to determine whether the action to which the request relates may be effected by Consent under paragraph (b)(iii) of this Article Sixth, determine the validity of the request and whether the request relates to an action that may be taken by Consent and, if appropriate, adopt a resolution fixing the record date for such purpose. The record date for such purpose shall be no more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors and shall not precede the date such resolution is adopted. If a request complying with the second and third sentences of this paragraph (b)(i) has been delivered to the secretary of the Corporation but no record date has been fixed by the Board of Directors by the date required by the preceding sentence, the record date shall be the first date on which a signed Consent relating to the action taken or proposed to be taken by Consent is delivered to the Corporation in the manner described in paragraph (b)(vi) of this Article Sixth; provided that, if prior action by the Board of Directors is required under the provisions of Delaware law, the record date shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(ii) Request Requirements. Any request required by paragraph (b)(i) of this Article Sixth (a) must be delivered by the holders of record of at least 20% of the outstanding shares of common stock of the, who shall not revoke such request and who shall continue to own not less than 20% of the outstanding shares of common stock of the Corporation through the date of delivery of Consents signed by a sufficient number of stockholders to authorize or take such action; (b) must contain an agreement to solicit

Consents in accordance with paragraph (b)(iv) of this Article Sixth, (c) must describe the action proposed to be taken by written consent of stockholders and (d) must contain (1) such information and representations, to the extent applicable, then required by Section 2.03(b) of the Corporation's By-laws as though such stockholder was intending to propose an amendment to the Corporation's Restated Certificate of Incorporation or By-laws or other business to be brought before a meeting of stockholders and (2) the text of the proposed action to be taken (including the text of any resolutions to be adopted by Consent) and (e) must include documentary evidence that the requesting stockholder(s) own in the aggregate not less than 20% of the outstanding shares of common stock of the Corporation as of the date of such written request to the secretary; provided, however, that if the stockholder(s) making the request are not the beneficial owners of the shares representing at least 20% of the outstanding shares of common stock of the Corporation, then to be valid, the request must also include documentary evidence (or, if not simultaneously provided with the request, such documentary evidence must be delivered to the secretary within ten business days after the date on which the request is delivered to the secretary) that the beneficial owners on whose behalf the request is made beneficially own at least 20% of the outstanding shares of common stock of the Corporation as of the date on which such request is delivered to the secretary. If the action proposes to elect directors by written consent, the written request for a record date must also contain the information required by Section 3.03 of the Corporation's By-laws. The Corporation may require the stockholder(s) submitting such request to furnish such other information as may be reasonably requested by the Corporation. Any requesting stockholder may revoke his, her or its request at any time by written revocation delivered to the secretary of the Corporation at the Corporation's principal executive offices. Any disposition by a requesting stockholder of any shares of common stock of the Corporation (or of beneficial ownership of such shares by the beneficial owner on whose behalf the request was made) after the date of the request, shall be deemed a revocation of the request with respect to such shares, and each requesting stockholder and the applicable beneficial owner shall certify to the secretary of the Corporation on the day prior to the record date set for the action by written consent as to whether any such disposition has occurred. If the unrevoked requests represent in the aggregate less than 20% of the outstanding shares of common stock of the Corporation, the Board of Directors, in its discretion, may cancel the action by written consent.

(iii) Actions Which May Be Taken by Written Consent. Stockholders are not entitled to act by Consent if (a) the record date request does not comply with this Article Sixth or the Corporation's By-Laws; (b) the action relates to an item of business that is not a proper subject for stockholder action under applicable law; (c) the request for a record date for such action is received by the Corporation during the period commencing 90 days prior

to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (d) an identical or substantially similar item of business (as determined by the Board of Directors of the Corporation in its reasonable determination, which determination shall be conclusive and binding on the Corporation and its stockholders, (a "Similar Item")), was presented at a meeting of stockholders held not more than 12 months before the request is received by the secretary of the Corporation; (e) a Similar Item consisting of the election or removal of directors was presented at a meeting of stockholders held not more than 90 days before the request is received by the secretary of the Corporation (and, for purposes of this clause, the election or removal of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors), (f) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special stockholders meeting that has been called but not yet held or that is called to be held within 90 days after the request is received by the secretary of the Corporation; or (g) such record date request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934 or other applicable law. For purposes of this paragraph (b)(iii), the nomination, election or removal of directors shall be deemed to be a Similar Item with respect to all actions involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(iv) Manner of Consent Solicitation. Holders of common stock of the Corporation may take action by written consent only if Consents are solicited from all holders of common stock of the Corporation entitled to vote on the matter and in accordance with applicable law.

(v) Date of Consent. Every Consent purporting to take or authorize the taking of corporate action must bear the date of signature of each stockholder who manually signs the Consent, and no Consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated Consent delivered in the manner required by paragraph (b)(vi) of this Article Sixth and not later than 120 days after the record date, Consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation.

(vi) Delivery of Consents. No Consents may be dated or delivered to the Corporation or its registered office in the State of Delaware until 60 days after the delivery of a valid request to set a record date. Consents must be delivered to the Corporation by delivery to its registered office in the State of Delaware or its principal place of business. Delivery must be made by hand or by certified or registered mail, return receipt requested. The secretary of the Corporation shall provide for the safe-keeping of such Consents and any related revocations and shall promptly designate one or

more persons, who shall not be members of the Board of Directors, to serve as inspectors ("Inspectors") with respect to such Consents. The Inspectors shall promptly conduct a ministerial review of the sufficiency of all Consents and any related revocations and of the validity of the action to be taken by written consent as the secretary of the Corporation deems necessary or appropriate, including, without limitation, whether the stockholders of a number of shares having the requisite voting power to authorize or take the action specified in Consents have given consent. If after such investigation the Inspectors shall determine that the action purported to have been taken is duly authorized by the Consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the Consents shall be filed in such records. In conducting the investigation required by this section, the Inspectors of the Corporation may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(vii) Effectiveness of Consent. No action may be taken by the stockholders by Consent except in accordance with this Article Sixth. If the Board of Directors shall determine that any request to fix a record date was not properly made in accordance with, or relates to an action that may not be effected by Consent pursuant to, this Article Sixth, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Article Sixth, then the Board of Directors shall not be required to fix a record date and any such purported action by Consent shall be null and void to the fullest extent permitted by applicable law. No Consent shall be effective until such date as the Inspectors certify to the Corporation that the Consents delivered to the Corporation in accordance with paragraph (vi) of this Article Sixth, represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with Delaware law and this Certificate of Incorporation.

(viii) Challenge to Validity of Consent. Nothing contained in this Article Sixth shall in any way be construed to suggest or imply that the Board of Directors of the Corporation or any stockholder shall not be entitled to contest the validity of any Consent or related revocations, whether before or after such certification by the Inspectors, as the case may be, or to prosecute or defend any litigation with respect thereto.

(ix) Board-solicited Stockholder Action by Written Consent. Notwithstanding anything to the contrary set forth above, (x) none of the foregoing provisions of this Article Sixth shall apply to any solicitation of stockholder action by written consent by or at the direction of the Board of

Directors and (y) the Board of Directors shall be entitled to solicit stockholder action by written consent in accordance with applicable law.

ARTICLE SEVENTH

Amendment of Certificate of Incorporation

The Corporation reserves the right to supplement, amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Certificate of Incorporation, and all rights conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing, this ARTICLE SEVENTH and sections (b) and (d) of ARTICLE FIFTH may not be supplemented, amended, altered, changed, or repealed in any respect, nor may any provision inconsistent therewith be adopted, unless such supplement, amendment, alteration, change or repeal is approved by the affirmative vote of the holders of at least 80% of the combined voting power of the then outstanding shares of stock of all classes of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE EIGHTH

Amendment of By-Laws

In furtherance and not in limitation of the powers conferred upon it by law, the Board of Directors of the Corporation is expressly authorized to adopt, repeal, alter or amend the By-Laws of the Corporation. No By-Laws may be adopted, repealed, altered or amended in any manner that would be inconsistent with this Amended and Restated Certificate of Incorporation (as it may be adopted, repealed, altered or amended from time to time in accordance with ARTICLE SEVENTH).

ARTICLE NINTH

Limitation of Liability

Except to the extent elimination or limitation of liability is not permitted by applicable law, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty in such capacity. Any repeal or modification of this ARTICLE NINTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE TENTH

Liability of Stockholders

The holders of the capital stock of the Corporation shall not be personally liable for the payment of the Corporation's debts, and the private property of the holders of the capital stock of the Corporation shall not be subject to the payment of debts of the Corporation to any extent whatsoever.

ARTICLE ELEVENTH

Effectiveness

This Amended and Restated Certificate of Incorporation is to become effective at 12:01 a.m. on May 20, 2014.

EXHIBIT C

AMENDED AND RESTATED

BY-LAWS

OF

DUKE ENERGY CORPORATION

A Delaware corporation

Effective as of January 4, 2016

TABLE OF CONTENTS

AMENDED AND RESTATED BY-LAWS

OF

DUKE ENERGY CORPORATION

(A CORPORATION ORGANIZED UNDER THE LAWS OF THE
STATE OF DELAWARE, THE "CORPORATION")
(EFFECTIVE AS OF JANUARY 4, 2016)

ARTICLE I
Offices

Section 1.01. Principal Office. The principal office of the Corporation shall be located in Charlotte, North Carolina.

Section 1.02. Registered Office and Agent. The address of the registered office of the Corporation in the State of Delaware shall be 1209 Orange Street, Wilmington, Delaware 19801. The name of the registered agent is The Corporation Trust Company. Such registered agent has a business office identical with such registered office.

Section 1.03. Other Offices. The Corporation may have such other offices either within or without the State of Delaware as the Board of Directors (the "Board" and each member thereof, a "Director") may designate or as the business of the Corporation may from time to time require.

ARTICLE II
Stockholders

Section 2.01. Place of Stockholders' Meetings. All meetings of the stockholders of the Corporation shall be held at such place or places, within or outside the State of Delaware, as may be fixed by the Board from time to time or as shall be in the respective notices thereof. The Board may, in its sole discretion, determine that a meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication in the manner authorized by the General Corporation Law of the State of Delaware (the "DGCL").

Section 2.02. Day and Time of Annual Meetings of Stockholders. An annual meeting of stockholders shall be held at such date and hour as shall be determined by the Board and designated in the notice thereof. Any previously scheduled annual meeting of stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of stockholders.

Section 2.03. Purposes of Annual Meetings.Subject to the rights of the holders of any series of Preferred Stock of the Corporation, at each annual meeting, the stockholders shall elect the

Directors. At any such annual meeting any other business properly brought before the meeting may be transacted.

(b) To be properly brought before an annual meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board, (ii) otherwise properly brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder who is a holder of record at the time of the giving of notice provided for in this Section 2.03(b), who is entitled to vote at the meeting and who complies with the procedures set forth in this Section 2.03(b). For business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action under applicable law and the stockholder must have given written notice thereof, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation at the principal executive offices of the Corporation, not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be May 1, 2006, and provided, further, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first. In no event shall the public announcement of an adjournment of an annual meeting of stockholders commence a new time period for the giving of a stockholder's notice as described above. Any such notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, and, in the event that such business includes a proposal to amend either the Restated Certificate of Incorporation of the Corporation (the "Certificate") or these By-Laws, the text of the proposed amendment, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business and (v) if the stockholder intends to solicit proxies in support of such stockholder's proposal, a representation to that effect. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting and such stockholder's proposal has been included in a proxy statement that has been prepared by management of the Corporation to solicit proxies for such annual meeting; provided, however, that if such stockholder does not appear or send a qualified representative to present such proposal at such annual meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. No business shall be conducted at an annual meeting of stockholders except in accordance with this Section 2.03(b), and the presiding officer of any annual meeting of stockholders may refuse to permit any business to be brought before an annual meeting without compliance with the foregoing procedures or if the stockholder solicits proxies in support of such stockholder's proposal without such stockholder having made the representation required by clause (v) of the second preceding sentence.

Section 2.04. Special Meetings of Stockholders.

(a) Except as otherwise expressly required by the Certificate or applicable law and subject to the rights of the holders of any series of Preferred Stock of the Corporation, special meetings of the stockholders or of any class or series entitled to vote may be called for any purpose or purposes by the Chairman of the Board or by the Board of Directors pursuant to a resolution stating the purpose or purposes thereof, to be held at such place (within or without the State of Delaware), date and hour as shall be determined by the Chairman or the Board, as applicable, and designated in the notice

thereof. At any such special meeting any business properly brought before the meeting may be transacted.

(b) Special meetings of the stockholders or of any class or series entitled to vote may also be called by the Secretary of the Corporation upon the written request to the Secretary and delivered by certified mail to the Corporation's principal executive offices signed by the holders of record at the time such request is delivered representing at least fifteen percent (15%) of the outstanding shares of common stock of the Corporation (the "Requisite Percentage").

(i) Request Requirements. Any request or requests for a special meeting (a "Stockholder Requested Special Meeting") pursuant to paragraph (b) of this Section 2.04 (each, a "Special Meeting Request" and, collectively, the "Special Meeting Requests"), in the form required by this section (b)(i) of this Section 2.04, (1) must be delivered by the holders of record of at least 15% of the outstanding shares of common stock of the Corporation who have each held such shares continuously for at least one year prior to the delivery of the Special Meeting Request, who shall not revoke such request and who shall continue to own not less than 15% of the outstanding shares of common stock of the Corporation through the date of the Stockholder Requested Special Meeting; (2) must provide a reasonably brief statement of the specific purpose or purposes of the Stockholder Requested Special Meeting, the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting and the reasons for conducting such business at the Stockholder Requested Special Meeting; (3) must contain (A) such information and representations, to the extent applicable, then required by Section 2.03(b) of the Corporation's By-Laws as though such stockholder was intending to propose an amendment to the Corporation's Certificate or By-Laws or other business to be brought before an annual meeting of stockholders and (B) the text of any resolutions proposed to be considered and, in the event that such business includes a proposal to amend the Corporation's By-Laws, the language of the proposed amendment; (4) must contain an agreement by the requesting stockholders to notify the Company promptly in the event of any disposition following the date of the Special Meeting Request of shares of the Company owned by the requesting stockholders and an acknowledgement that any such disposition prior to the date of the Stockholder Requested Special Meeting shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares and that such shares will no longer be included in determining whether the Requisite Percentage has been satisfied; and (5) must provide documentary evidence that the requesting stockholders own in the aggregate not less than 15% of the outstanding shares of common stock of the Corporation as of the date of the Special Meeting Request to the Secretary, and have held such shares continuously for one year prior to the date of the Special Meeting Request; provided, however, that if the stockholders making the Special Meeting Request are not the beneficial owners of the shares representing at least 15% of the outstanding shares of common stock of the Corporation, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the request, such documentary evidence must be delivered to the Secretary by certified mail within ten business days after the date of the Special Meeting Request) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own at least 15% of the outstanding shares of common stock of the Corporation as of the date on which the Special Meeting Request is delivered to the Secretary and have held such shares continuously for one year prior to the Special Meeting Request. If the purpose of the Stockholder Special Meeting is to elect directors, the Special Meeting Request must also contain the information and representations required by Section 3.03 of the Corporation's By-Laws. The Corporation may require

the stockholders submitting the Special Meeting Request to furnish such other information as may be reasonably requested by the Corporation. Any requesting stockholder may revoke his, her or its Special Meeting Request at any time prior to the date of the Stockholder Requested Special Meeting by written revocation delivered to the Secretary of the Corporation by certified mail at the Corporation's principal executive offices. If, following such revocation (or deemed revocation pursuant to clause (4) of Section 2.04(b)(i)), there are unrevoked requests from requesting stockholders holding in the aggregate less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the Stockholder Requested Special Meeting. If none of the stockholders who submitted a Stockholder Special Meeting Request for a Stockholder Requested Special Meeting appears or sends a qualified representative to present the business proposed to be conducted at the Stockholder Requested Special Meeting, the Corporation need not present such business for a vote at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(ii) Calling of a Stockholder Requested Special Meeting. The Secretary of the Corporation shall not be required to call a Stockholder Requested Special Meeting pursuant to Section 2.04(b) if (1) the Special Meeting Request does not comply with Section 2.04(b); (2) the action relates to an item of business that is not a proper subject for stockholder action under applicable law; (3) the Special Meeting Request is received by the Secretary of the Corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (4) an identical or substantially similar item of business, as determined by the Board of Directors of the Corporation in its reasonable determination, which determination shall be conclusive and binding on the Corporation and its stockholders, (a "Similar Item"), was presented at a meeting of stockholders held not more than 12 months before the Special Meeting Request is received by the Secretary of the Corporation; (5) a Similar Item consisting of the election or removal of directors was presented at a meeting of stockholders held not more than 90 days before the Special Meeting Request is received by the Secretary of the Corporation (and, for purposes of this clause, the election or removal of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors); (6) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special stockholders meeting that has been called but not yet held or that is called to be held within 90 days after the Special Meeting Request is received by the Secretary of the Corporation; or (7) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934 or other applicable law. For purposes of this paragraph (b)(ii), the nomination, election or removal of directors shall be deemed to be a Similar Item with respect to all actions involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(c) Except as provided in the next sentence, any special meeting 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 in accordance with Section 2.12 of these By-Laws and the DGCL. In the case of a Stockholder Requested Special Meeting, following delivery of a Special Meeting Request, the Board of Directors shall, by the later of (x) 20 days after delivery of a valid Special Meeting Request and (y) five days after delivery of any information required by the Corporation to determine the validity of the Special Meeting

Request or the purpose to which the Special Meeting Request relates under paragraph (b)(ii) of this Section 2.04, determine the validity of the Special Meeting Request, and, if appropriate, adopt a resolution fixing the record date for such Stockholder Requested Special Meeting. Special meetings of stockholders called pursuant to this Section 2.04(b) shall be held at such place, on such date, and at such time as the Board of Directors shall fix; provided; however, that the Stockholder Requested Special Meeting shall not be held more than 90 days after receipt by the Company of a valid Special Meeting Request. In fixing a date and time for any Stockholder Requested Special Meeting the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting.

(d) To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board or (ii) otherwise properly brought before the meeting by or at the direction of the Board. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting. No business shall be conducted at a special meeting of stockholders except in accordance with this Section 2.04(d) or as required by applicable law.

Section 2.05. Notice of Meetings of Stockholders. Whenever stockholders are required or permitted to take any action at a meeting, unless notice is waived in writing by all stockholders entitled to vote at the meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called.

In lieu of and/or in addition to the foregoing, notice of any meeting of the stockholders of the Corporation may be given via electronic transmission, to the fullest extent permitted by Section 232 of the DGCL. To be valid, such electronic transmission notice must be in a form of electronic transmission to which the stockholder has consented. Any stockholder can revoke consent to receive notice by a form of electronic transmission by written notice to the Corporation. Such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat any such undeliverable notices as a revocation shall not invalidate any meeting or other action. "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record and that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Unless otherwise provided by law, and except as to any stockholder duly waiving notice, the written notice of any meeting shall be given personally, by mail, or by a form of electronic transmission consented to by the stockholder to whom notice is given, not less than 10 days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the Corporation. If by a form of electronic transmission, notice shall be deemed given when transmitted to the stockholder in accordance with the provisions set forth herein; provided, however, that if the electronic transmission notice is posted on an

electronic network (e.g., a website or chatroom), notice shall be deemed given upon the later of (A) such posting and (B) the giving of separate notice of the posting to the stockholder.

Except as otherwise expressly required by applicable law, notice of any adjourned meeting of stockholders need not be given if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken.

Section 2.06. Quorum of Stockholders.

(a) Unless otherwise expressly required by the Certificate or applicable law, at any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of the votes entitled to be cast thereat shall constitute a quorum for the entire meeting, notwithstanding the withdrawal of stockholders entitled to cast a sufficient number of votes in person or by proxy to reduce the number of votes represented at the meeting below a quorum. Shares of the Corporation's stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in an election of the directors of such other corporation is held by the Corporation, shall neither be counted for the purpose of determining the presence of a quorum nor be entitled to vote at any meeting of the stockholders; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including its own stock, held by it in a fiduciary capacity.

(b) At any meeting of the stockholders at which a quorum shall be present, a majority of those present in person or by proxy may adjourn the meeting from time to time. Whether or not a quorum is present, the officer presiding thereat shall have power to adjourn the meeting from time to time. Except as otherwise expressly required by applicable law, notice of any adjourned meeting other than announcement at the meeting at which an adjournment is taken shall not be required to be given.

(c) At any adjourned meeting, any business may be transacted that might have been transacted at the meeting originally called, but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board.

Section 2.07. Presiding Official and Secretary of Meeting; Conduct of Meetings.

(a) The Chairman of the Board or, in his or her absence, the Chief Executive Officer or, in the absence of the Chairman of the Board and the Chief Executive Officer, an officer of the Corporation designated by the Chairman of the Board, shall preside at meetings of the stockholders. The Secretary or an Assistant Secretary of the Corporation shall act as secretary of the meeting, or if neither is present, then the presiding officer may appoint a person to act as secretary of the meeting.

(b) The Board may to the extent not prohibited by law adopt such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the presiding officer of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may to the extent not prohibited by law include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding officer of the meeting

shall determine, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof and (v) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board or the presiding officer of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.08. Voting by Stockholders.

(a) Except as otherwise expressly required by the Certificate or applicable law, at every meeting of the stockholders each stockholder of record shall be entitled to the number of votes specified in the Certificate (or, with respect to any class or series of Preferred Stock, in the applicable certificate of designations providing for the creation of such class or series), in person or by proxy, for each share of stock standing in his or her name on the books of the Corporation on the date fixed pursuant to the provisions of Section 2.12 of these By-Laws as the record date for the determination of the stockholders who shall be entitled to receive notice of and to vote at such meeting.

(b) When a quorum is present at any meeting of the stockholders, all questions shall be decided by the vote of a majority of the total number of votes of the Corporation's capital stock represented and entitled to vote at such meeting, unless the question is one upon which by express provision of law, the rules or regulations of any stock exchange or governmental or regulatory body applicable to the Corporation, the Certificate or these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Such votes may be cast in person or by proxy as provided in Section 2.09.

(c) Except as otherwise expressly required by applicable law, the vote at any meeting of stockholders on any question need not be by ballot, unless so directed by the presiding officer of the meeting.

Section 2.09. Proxies. Each stockholder entitled to vote at a meeting of the 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 as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such

other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.10. Inspector. In advance of any meeting of the stockholders, the Board or the Chairman of the Board shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the stockholders, the presiding officer of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

Section 2.11. List of Stockholders.

(a) At least ten days before every meeting of stockholders, the officer who has charge of the stock ledger of the Corporation shall cause to be prepared and made a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder.

(b) For such ten-day period through the conclusion of the meeting, such list shall be open to examination by any stockholder for any purpose germane to the meeting as required by applicable law (i) on a reasonably accessible electronic network provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

(c) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.11 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.12. Fixing of Record Date for Determination of Stockholders of Record.

(a) 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, the Board 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, and which record date shall not be more than 60 nor less than ten days before the date of such meeting.

If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by 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 an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board, and prior action by the Board is required by law, the record date for determining the stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolutions taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders 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 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, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

ARTICLE III
Directors

Section 3.01. Number and Qualifications. The number of Directors constituting the Board shall be not less than nine nor more than 18, as may be fixed from time to time by the Board in accordance with Section 3.07. A Director must be a stockholder of the Corporation or become a stockholder of the Corporation within a reasonable time after election to the Board. Notwithstanding any provision in these By-Laws or the Certificate to the contrary, prior to the first annual meeting of stockholders at which Directors are elected following the effective date of these By-Laws, the size of the Initial Board shall not be increased or decreased without the affirmative vote of at least 80% of the entire Board.

Section 3.02. Chairman of the Board. The Chairman of the Board shall be chosen from among the Directors. The Chairman of the Board shall perform all duties incidental to such person's position which may be required by law and all such other duties as are properly required of the

Chairman of the Board by the Board. The Chairman of the Board shall preside at all meetings of stockholders and of the Board and shall make reports to the Board and the stockholders, and shall see that all orders and resolutions of the Board and of any Committee thereof are carried into effect. The Chairman of the Board shall have such other duties and Elected Officers reporting directly to him or her as set forth in a resolution of the Board.

Section 3.03. Election and Term of Directors. Subject to the rights of the holders of any class or series of Preferred Stock of the Corporation, nominations of persons for election as Directors may be made by the Board or by any stockholder who is a stockholder of record at the time of giving of the notice of nomination provided for in this Section 3.03 and who is entitled to vote for the election of Directors. Any stockholder of record entitled to vote for the election of Directors at a meeting may nominate a person or persons for election as Directors only if written notice of such stockholder's intent to make such nomination is given, either by personal delivery or by United States mail, postage prepaid, to the Secretary at the principal executive offices of the Corporation, (i) with respect to an election to be held at an annual meeting of stockholders, not less than 90 nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting provided, that the first such anniversary date occurring after the effective date of these By-Laws shall be deemed to be May 1, 2006 and provided, further, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so received not later than the tenth day following the day on which notice of the date of the annual meeting was mailed or public announcement of the date of such meeting is first made by the Corporation, whichever occurs first and (ii) with respect to an election to be held at a special meeting of stockholders for the election of Directors, not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the tenth day following the day on which public announcement of the date of the special meeting and of the nominees to be elected at such meeting is first made. Each such notice shall set forth: (a) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (d) such other information regarding each nominee proposed by such stockholder as would have been required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission (the "SEC") had each nominee been nominated, or intended to be nominated, by the Board; (e) the consent of each nominee to serve as a Director if so elected and (f) if the stockholder intends to solicit proxies in support of such stockholder's nominee(s), a representation to that effect. The presiding officer of any meeting of stockholders to elect Directors and the Board may refuse to acknowledge any attempted nomination of any person not made in compliance with the foregoing procedure or if the stockholder solicits proxies in support of such stockholder's nominee(s) without such stockholder having made the representation required by clause (f) of the preceding sentence. Only such persons who are nominated in accordance with the procedures set forth in this Section 3.03 shall be eligible to serve as Directors of the Corporation.

At each meeting of the stockholders for the election of Directors at which a quorum is present, each Director shall be elected by the affirmative vote of the majority of the votes cast with respect to the Director; provided that if the number of nominees exceeds the number of Board seats open for election, the persons receiving the greatest number of votes, up to the number of Board seats open for election, shall be the Directors. Each Director so elected shall hold office until the next annual meeting of stockholders and until such Director's successor is duly elected and qualified or until such Director's earlier death, resignation or removal. For purposes of this Section 3.03, a majority of the votes cast

means that the number of shares voted "for" the election of a director must exceed the votes "withheld" from the election of that director.

Section 3.04. Proxy Access for Director Nominations.

(a) Subject to the terms and conditions of these By-Laws, the Corporation shall include in its proxy statement and on its form of proxy for an annual meeting of stockholders the name of, and shall include in its proxy statement the Required Information (as defined below) relating to, any nominee for election to the Board delivered pursuant to this Section 3.04 (a "Stockholder Nominee") who satisfies the eligibility requirements in this Section 3.04, and who is identified in a timely and proper notice that both complies with this Section 3.04 (the "Stockholder Notice") and is given by a stockholder on behalf of one or more stockholders or on behalf of any affiliate, associate of, or any other party acting in concert with or on behalf of one or more stockholders nominating a Stockholder Nominee or beneficial owners on whose behalf such stockholder(s) is acting (an "Associated Person"), but in no case more than twenty stockholders or beneficial owners, that:

(i) expressly elect at the time of the delivery of the Stockholder Notice to have such Stockholder Nominee included in the Corporation's proxy materials,

(ii) as of the date of the Stockholder Notice, own and continuously have owned during the three prior years at least three percent (3%) of the outstanding shares of common stock of the Corporation entitled to vote in the election of Directors (the "Required Shares"), and

(iii) satisfy the additional requirements in these By-Laws (an "Eligible Stockholder").

(b) For purposes of qualifying as an Eligible Stockholder and satisfying the ownership requirements under Section 3.04(a):

(i) the outstanding shares of common stock of the Corporation owned by one or more stockholders and beneficial owners that each stockholder and/or beneficial owner has owned continuously for at least three years as of the date of the Stockholder Notice may be aggregated, provided that the number of stockholders and Associated Persons whose ownership of shares is aggregated for such purpose shall not exceed twenty (20) and that any and all requirements and obligations for an Eligible Stockholder set forth in this Section 3.04 are satisfied by and as to each such stockholder and Associated Persons (except as noted with respect to aggregation or as otherwise provided in this Section 3.04), and

(ii) a group of funds that are (1) under common management and investment control, (2) under common management and funded primarily by the same employer, or (3) 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 (a "Qualifying Fund") shall be treated as one stockholder, provided that each fund included within a Qualifying Fund otherwise meets the requirements set forth in this Section 3.04.

(c) For purposes of this Section 3.04:

(i) A stockholder or beneficial owner shall be deemed to own only those outstanding shares of common stock of the Corporation as to which such person possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (A) sold by such person or any of its affiliates in any transaction that has not been settled or closed, including any short sale, (B) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell, or (C) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such person 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 Common Stock, in any such case which instrument or agreement has, or is intended to have the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such person's or its affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or its affiliate.

(ii) A stockholder or beneficial owner shall own shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of Directors and possesses the full economic interest in the shares. A person's ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the person.

(iii) A stockholder or beneficial owner's ownership of shares shall be deemed to continue during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five business days' notice and has recalled such loaned shares as of the date of the Stockholder Notice and through the date of the annual meeting.

Whether outstanding shares of the Corporation are owned for these purposes shall be determined by the Board.

(d) No stockholder or beneficial owner, alone or together with any Associated Person, may be a member of more than one group constituting an Eligible Stockholder under this Section 3.04.

(e) For purposes of this Section 3.04, the "Required Information" that the Corporation will include in its proxy statement is:

(i) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the applicable requirements of the Exchange Act and the rules and regulations thereunder; and

(ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder, not to exceed 500 words, in support of each Stockholder

Nominee, which must be provided at the same time as the Stockholder Notice for inclusion in the Corporation's proxy statement for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 3.04, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) that the Corporation, in good faith, believes (i) would violate any applicable law, rule, regulation or listing standard, or (ii) is not true and correct in all material respects or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Nothing in this Section 3.04 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(f) The Stockholder Notice shall set forth all information required under Section 3.03 above, and in addition shall include:

(i) the written consent of each Stockholder Nominee to being named in the Corporation's proxy materials as a nominee and to serving as a Director if elected,

(ii) a copy of the Schedule 14N that has been or concurrently is filed with the SEC under Exchange Act Rule 14a-18,

(iii) the written agreement of the Eligible Stockholder (in the case of a group, each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the Corporation, setting forth the following additional agreements, representations, and warranties:

(A) certifying to the number of shares of common stock of the Corporation it owns and has owned (as defined in Section 3.04(c) of these By-Laws) continuously for at least three years as of the date of the Stockholder Notice and agreeing to continue to own such shares through the annual meeting, which statement shall also be included in the Schedule 14N filed by the Eligible Stockholder with the SEC,

(B) the Eligible Stockholder's agreement to provide written statements from the record holder and intermediaries as required under Section 3.04(h) verifying the Eligible Stockholder's continuous ownership of the Required Shares through and as of the business day immediately preceding the date of the annual meeting;

(C) the Eligible Stockholder's representation and warranty that the Eligible Stockholder (including each member of any group of stockholders and/or Associated Persons that together is an Eligible Stockholder) (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have any such intent, (2) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 3.04, (3) has not engaged and will not engage in, and has not been and will not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a Director at the annual meeting other than its Stockholder Nominee or a nominee of the Board, and (4) will not distribute any form of proxy for the annual meeting other than the form distributed by the Corporation, and

(iv) the Eligible Stockholder's agreement to (1) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (2) indemnify and hold harmless the Corporation and each of its Directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its Directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 3.04, (3) comply with all other laws, rules, regulations and listing standards applicable to any solicitation in connection with the annual meeting, (4) file all materials described in Section 3.04(h)(iii) with the SEC, regardless of whether any such filing is required under Exchange Act Regulation 14A, or whether any exemption from filing is available for such materials under Exchange Act Regulation 14A, and (5) provide to the Corporation prior to the annual meeting such additional information as necessary or reasonably requested by the Corporation, and in the case of a nomination by a group of stockholders or beneficial owners that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including withdrawal of the nomination.

(g) To be timely under this Section 3.04, the Stockholder Notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not later than the 120th day nor earlier than the 150th day prior to the first anniversary of the date the definitive proxy statement was first sent to stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event the date of the annual meeting is more than 30 days before or after such anniversary date, or if no annual meeting was held in the preceding year, to be timely the Stockholder Notice must be so delivered not earlier than the 150th day prior to such annual meeting and not later than the later of the 120th day prior to such annual meeting or the 10th day following the day on which the date of such meeting is first publicly announced by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice has been given or with respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of the Stockholder Notice.

(h) An Eligible Stockholder must:

(i) within five business days after the date of the Stockholder Notice, provide one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, specifying the number of shares that the Eligible Stockholder owns, and has owned continuously, in compliance with this Section 3.04,

(ii) include in the Schedule 14N filed with the SEC a statement certifying that it owns and continuously has owned the Required Shares for at least three years,

(iii) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the Corporation's annual meeting of stockholders, one or more of the Corporation's Directors or Director nominees or any Stockholder Nominee, regardless of whether any such filing is required under Exchange

Act Regulation 14A or whether any exemption from filing is available for such solicitation or other communication under Exchange Act Regulation 14A, and

(iv) as to any group of funds whose shares are aggregated for purposes of constituting an Eligible Stockholder, within five business days after the date of the Stockholder Notice, provide documentation reasonably satisfactory to the Corporation that demonstrates that the funds satisfy Section 3.04(b)(ii).

The information provided pursuant to this Section 3.04(h) shall be deemed part of the Stockholder Notice for purposes of this Section 3.04.

(i) Within the time period prescribed in Section 3.04(g) for delivery of the Stockholder Notice, the Eligible Stockholder must also deliver to the Secretary of the Corporation at the principal executive offices of the Corporation a written representation and agreement (which shall be deemed part of the Stockholder Notice for purposes of this Section 3.04) signed by each Stockholder Nominee and representing and agreeing that such Stockholder Nominee:

(i) is not and will not become a party to any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Stockholder Nominee, if elected as a Director, will act or vote on any issue or question,

(ii) is not and will not become a party to any agreement, arrangement, or understanding with any person with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a Director that has not been disclosed to the Corporation, and

(iii) if elected as a Director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to Directors.

At the request of the Corporation, the Stockholder Nominee must promptly, but in any event within five business days after such request, submit (i) all completed and signed questionnaires required of the Corporation's Directors, (ii) a written consent to the Corporation following such processes for evaluation as the Corporation follows in evaluating any other potential Board Nominee and (iii) such other information as the Corporation may reasonably request. The Corporation may request such additional information as necessary to permit the Board to determine if each Stockholder Nominee satisfies this Section 3.04.

(j) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any such defect or limit the Corporation's right to omit a Stockholder Nominee from its proxy materials pursuant to this Section 3.04.

Notwithstanding anything to the contrary contained in this Section 3.04, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(i) the Eligible Stockholder or Stockholder Nominee breaches any of its respective agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 3.04), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 3.04) was not, when provided, true, correct and complete, or the requirements of this Section 3.04 have otherwise not been met,

(ii) the Stockholder Nominee is not independent under the listing standards of the principal U.S. exchange upon which the shares of the Corporation are listed, any applicable rules of the SEC, and the Corporation's Standards for Assessing Director Independence,

(iii) the Stockholder Nominee is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914,

(iv) the Stockholder Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years,

(v) a notice is delivered to the Corporation (whether or not subsequently withdrawn) under Section 3.03 of these By-Laws indicating that a stockholder intends to nominate any candidate for election to the Board, or

(vi) the election of the Stockholder Nominee to the Board would cause the Corporation to be in violation of the Certificate, these By-Laws, or any applicable state or federal law, rule, or regulation or any applicable listing standard.

(k) The maximum number of Stockholder Nominees that may be included in the Corporation's proxy materials pursuant to this Section 3.04 shall not exceed the greater of (i) two or (ii) twenty percent (20%) of the number of Directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 3.04 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number below twenty percent (20%): provided, however, that this number shall be reduced by any (i) Stockholder Nominees whose name was submitted for inclusion in the Corporation's proxy materials pursuant to this Section 3.04 but either is subsequently withdrawn or that the Board of Directors decides to nominate as a Board nominee and (ii) any Stockholder Nominees elected to the Board of Directors at either of the two preceding annual meetings who are standing for reelection at the nomination of the Board of Directors. In the event that one or more vacancies for any reason occurs after the deadline in Section 3.04(g) for delivery of the Stockholder Notice but before the annual meeting and the Board 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. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 3.04 exceeds this maximum number, the Corporation shall determine which Stockholder Nominees shall be included in the Corporation's proxy materials in accordance with the following provisions: each Eligible Stockholder (or in the case of a group, each group constituting an Eligible Stockholder) will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the maximum number is reached, going in

order of the amount (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as owned in its respective Stockholder Notice submitted to the Corporation. If the maximum number is not reached after each Eligible Stockholder (or in the case of a group, each group constituting an Eligible Stockholder) has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the maximum number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 3.04 is thereafter nominated by the Board, and thereafter is not included in the Corporation's proxy materials or thereafter is not submitted for Director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 3.04), no other nominee or nominees shall be included in the Corporation's proxy materials or otherwise submitted for Director election in substitution thereof.

(l) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these By-Laws or (ii) does not receive at least equal to twenty-five percent (25%) of the votes cast in favor of the Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 3.04 for the next two annual meetings.

(m) The Board (and any other person or body authorized by the Board) shall have the power and authority to interpret this Section 3.04 and to make any and all determinations necessary or advisable to apply this Section 3.04 to any persons, facts or circumstances, including the power to determine (i) whether one or more stockholders or beneficial owners qualifies as an Eligible Stockholder, (ii) whether a Stockholder Notice complies with this Section 3.04 and has otherwise met the requirements of this Section 3.04, (iii) whether a Stockholder Nominee satisfies the qualifications and requirements in this Section 3.04, and (iv) whether any and all requirements of this Section 3.04 (or any applicable requirements of Section 3.03 of these By-Laws) have been satisfied. Any such interpretation or determination adopted in good faith by the Board (or any other person or body authorized by the Board) shall be binding on all persons, including the Corporation and its stockholders (including any beneficial owners). Notwithstanding the foregoing provisions of this Section 3.04, unless otherwise required by law or otherwise determined by the chairman of the meeting or the Board, if (i) the Eligible Stockholder or (ii) a qualified representative of the stockholder does not appear at the annual meeting of stockholders of the Corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the Corporation. This Section 3.04 shall be the exclusive method for stockholders to include nominees for Director election in the Corporation's proxy materials.

Section 3.05. Newly Created Directorships; Vacancies. Subject to the rights of holders of any class or series of Preferred Stock and unless otherwise required by the Certificate, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled only by the affirmative vote of a majority of the remaining Directors then in office, even though less than a quorum of the Board, and any Director so chosen shall hold office until the next annual meeting of stockholders at which Directors are elected and until their successors are duly elected and qualified, or until their earlier death, resignation or removal. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of any incumbent Director.

Section 3.06. Resignation. Any Director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof, and the acceptance of such

resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 3.07. Meetings of the Board.

(a) The Board may hold its meetings, both regular and special, either within or outside the State of Delaware, at such places as from time to time may be determined by the Board or as may be designated in the respective notices or waivers of notice thereof.

(b) Regular meetings of the Board shall be held at such times and at such places as from time to time shall be determined by the Board.

(c) The first meeting of each newly elected Board shall be held as soon as practicable after the annual meeting of the stockholders.

(d) Special meetings of the Board shall be held whenever called by direction of the Chairman of the Board or at the request of Directors constituting a majority of the number of Directors then in office.

(e) Members of the Board or any Committee of the Board may participate in a meeting of the Board or such Committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and by any other means of remote communication permitted by applicable law, and such participation shall constitute presence in person at such meeting.

(f) A regular meeting of the Board of Directors shall be held without other notice than this By-Law as soon as practicable after the annual meeting of stockholders. The Board may, by resolution, provide the time and place for the holding of additional regular meetings without other notice than such resolution. Notice of any special meeting of the Board shall be given to each Director at such Director's business or residence in writing by hand delivery, first-class or overnight mail or courier service, facsimile transmission or orally by telephone. If mailed by first-class mail, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five calendar days before such meeting. If by overnight mail or courier service, such notice shall be deemed adequately delivered when the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by facsimile transmission, such notice shall be deemed adequately delivered when the notice is transmitted at least 12 hours before such meeting. If by telephone or by hand delivery, the notice shall be given at least 12 hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting. Any and all business may be transacted at any meeting of the Board. No notice of any adjourned meeting need be given. No notice to or waiver by any Director shall be required with respect to any meeting at which the Director is present except when such Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened.

Section 3.08. Quorum and Action. Except as otherwise expressly required by the Certificate, these By-Laws or applicable law, at any meeting of the Board, the presence of at least a majority of the number of Directors fixed pursuant to these By-Laws shall constitute a quorum for the transaction of business; but if there shall be less than a quorum at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. Unless otherwise provided by applicable law, the Certificate or these By-Laws, the vote of a majority of the Directors present at any meeting at which a

quorum is present shall be necessary for the approval and adoption of any resolution or the approval of any act of the Board.

Section 3.09. Presiding Director and Secretary of Meeting. The Chairman of the Board or, in the absence of the Chairman of the Board, the Lead Director, or in the absence of the Chairman of the Board and the Lead Director, a member of the Board selected by the members present, shall preside at meetings of the Board. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the presiding Director may appoint a secretary of the meeting.

Section 3.10. Action by Consent without Meeting. Any action required or permitted to be taken at any meeting of the Board or of any Committee thereof may be taken without a meeting if all of the Directors or members of such Committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board or such Committee.

Section 3.11. Compensation of Directors. Directors, as such, may receive, pursuant to resolution of the Board, fixed fees and other compensation for their services as Directors, including, without limitation, their services as members of a Committee of the Board.

Section 3.12. Committees of the Board and Powers. The Board may designate one or more Committees of the Board, which shall consist of two or more Directors. Any such Committee may to the extent permitted by applicable law exercise such powers and shall have such responsibilities as shall be specified in the designating resolution. A Committee of the Board may not (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by law to be submitted to stockholders for approval or (ii) adopt, amend or repeal any bylaw of the corporation. The Board shall have power at any time to fill vacancies in, to change the membership of, or to dissolve any such Committee. Nothing herein shall be deemed to prevent the Board from appointing one or more Committees consisting in whole or in part of persons who are not Directors; provided, however, that no such Committee shall have or may exercise any authority of the Board.

Section 3.13. Meetings of Committees. Regular meetings of any Committee may be held without notice at such time and at such place, within or outside the State of Delaware, as from time to time shall be determined by such Committee. The Chairman of the Board, the Board or the Committee by vote at a meeting, or by two members of any Committee in writing without a meeting, may call a special meeting of any such Committee by giving notice to each member of the Committee in the manner provided for in Section 3.06(f) hereof. Unless otherwise provided in the Certificate, these By-Laws or by applicable law, neither business to be transacted at, nor the purpose of, any regular or special meeting of any such Committee need be specified in the notice or any waiver of notice.

Section 3.14. Quorum of Committee; Manner of Action. At all meetings of any Committee a majority of the total number of its members shall constitute a quorum for the transaction of business. Except in cases in which it is by applicable law, by the Certificate, by these By-Laws, or by resolution of the Board otherwise provided, a majority of such quorum shall decide any questions that may come before the meeting. In the absence of a quorum, the members of the Committee present by majority vote may adjouru the meeting from time to time, without notice other than by verbal announcement at the meeting, until a quorum shall attend. A Committee may also act by the written consent of all members thereof although not convened in a meeting provided that such written consent is filed with the minute books of the Committee.

ARTICLE IV
Officers

Section 4.01. Elected Officers. The Elected Officers of the Corporation shall consist of the Chief Executive Officer and such other officers as the Board may designate as Elected Officers from time to time. Any two or more offices may be held simultaneously by the same person, except as otherwise expressly prohibited by applicable law. The Board may elect a Lead Director from among the independent (as such term is defined by applicable SEC or self-regulatory organization rule or regulation) members of the Board. Elected officers shall have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article IV. Such officers shall also have such powers and duties as from time to time may be conferred by the Board or by any Committee thereof. The Board or the Chief Executive Officer may from time to time appoint such other officers (including one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents Assistant Secretaries, Assistant Treasurers and Assistant Controllers), as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in these By-Laws or, to the extent consistent with these By-Laws, as may be prescribed by the Board or the Chief Executive Officer. The Corporation shall maintain a Chief Executive Officer, a President, a Secretary, a Treasurer and a Controller and such other officers as the Board may deem proper.

Section 4.02. Election and Term of Office. Elected Officers of the Corporation shall be elected by the Board at such times as the Board may deem necessary. Officers who are not Elected Officers may be elected from time to time by the Board or appointed by the Chief Executive Officer. Each officer shall hold office until such person's successor shall have been duty elected and shall have qualified or until such person's death or until he or she shall resign or shall be removed pursuant to Section 4.11.

Section 4.03. (Intentionally omitted.)

Section 4.04. Chief Executive Officer. The Chief Executive Officer shall be responsible for the general management of the affairs of the Corporation and shall perform all duties incidental to such person's office which may be required by law and all such other duties as are properly required of the Chief Executive Officer by the Board. The Chief Executive Officer shall report to the Board. The Chief Executive Officer shall, in the absence or inability to act of the Chairman of the Board and the Lead Director (if elected), preside at all meetings of stockholders.

Section 4.05. President. The President shall act in a general executive capacity and shall assist the Chief Executive Officer and the Chairman of the Board, if so designated by the Board, in the administration and operation of the Corporation's business and general supervision of its policies and affairs.

Section 4.06. Vice Presidents. The Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have such powers and duties as may be prescribed for them, respectively, by the Board or the Chief Executive Officer. Each of such officers shall report to the Chief Executive Officer or such other officer as the Chief Executive Officer shall direct or to the Chairman of the Board, if so designated by the Board.

Section 4.07. Secretary. The Secretary shall attend all meetings of the stockholders and of the Board, shall keep a true and faithful record thereof in proper books and shall have the custody and care of the corporate seal, records, minute books and stock books of the Corporation and of such other books and papers as in the practical business operations of the Corporation shall naturally belong in

the office or custody of the Secretary or as shall be placed in the Secretary's custody by order of the Board. The Secretary shall cause to be kept a suitable record of the addresses of stockholders and shall, except as may be otherwise required by statute or these By-Laws, sign and issue all notices required for meetings of stockholders or of the Board. The Secretary shall sign all papers to which the Secretary's signature may be necessary or appropriate, shall affix and attest the seal of the Corporation to all instruments requiring the seal, shall have the authority to certify the By-Laws, resolutions of the stockholders and the Board and other documents of the Corporation as true and correct copies thereof and shall have such other powers and duties as are commonly incidental to the office of Secretary and as may be assigned to him or her by the Board or the Chief Executive Officer.

Section 4.08. Treasurer. The Treasurer shall have charge of and supervision over and be responsible for the funds, securities, receipts and disbursements of the Corporation; cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositories as shall be selected in accordance with resolutions adopted by the Board; cause the funds of the Corporation to be disbursed by checks or drafts upon the authorized depositories of the Corporation, and cause to be taken and preserved proper vouchers for all moneys disbursed; render to the proper officers and to the Board and any duly constituted committee of the Board responsible for financial matters, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer; cause to be kept at the principal executive offices of the Corporation correct books of account of all its business and transactions; and, in general, perform all duties incident to the office of Treasurer and such other duties as are given to him or her by the By-Laws or as may be assigned to him or her by the Chief Executive Officer or the Board.

Section 4.09. Controller. The Controller shall be the chief accounting officer of the Corporation; shall keep full and accurate accounts of all assets, liabilities, commitments, revenues, costs and expenses, and other financial transactions of the Corporation in books belonging to the Corporation, and conform them to sound accounting principles with adequate internal control; shall cause regular audits of these books and records to be made; shall see that all expenditures are made in accordance with procedures duly established, from time to time, by the Corporation; shall render financial statements upon the request of the Board; and, in general, shall perform all the duties ordinarily connected with the office of Controller and such other duties as may be assigned to him or her by the Chief Executive Officer or the Board.

Section 4.10. Assistant Secretaries, Assistant Treasurers and Assistant Controllers. Assistant Secretaries, Assistant Treasurers and Assistant Controllers, when elected or appointed, shall respectively assist the Secretary, the Treasurer and the Controller in the performance of the respective duties assigned to such principal officers, and in assisting such principal officer, each of such assistant officers shall for such purpose have the powers of such principal officer; and, in case of the absence, disability, death, resignation or removal from office of any principal officer, such principal officer's duties shall, except as otherwise ordered by the Board, temporarily devolve upon such assistant officer as shall be designated by the Chief Executive Officer.

Section 4.11. Removal. Any officer or agent may be removed by the affirmative vote of a majority of the Directors then in office whenever, in their judgment, the best interests of the Corporation would be served thereby. In addition, any officer or agent appointed by the Chief Executive Officer may be removed by the Chief Executive Officer whenever, in his or her judgment, the best interests of the Corporation would be served thereby. Any removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4.12. Vacancies. A newly created elected office and a vacancy in any elected office because of death, resignation or removal may be filled by the Board for the unexpired portion of the term at any meeting of the Board. Any vacancy in an office appointed by the Chief Executive Officer because of death, resignation or removal may be filled by the Chief Executive Officer.

ARTICLE V
Indemnification

Section 5.01. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 5.03, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 5.02. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 5.03, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 5.03. Authorization of Indemnification. Any indemnification under this Article V (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Such determination shall be made, with respect to a person who is a Director or officer at the time of such determination, (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such Directors designated by a majority vote of such Directors, even though less than a quorum, or (iii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or

(iv) by the stockholders. Such determination shall be made, with respect to former Directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 5.04. Good Faith Defined. For purposes of any determination under Section 5.03, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 5.04 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be.

Section 5.05. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 5.03, and notwithstanding the absence of any determination thereunder, any Director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 5.01 or Section 5.02. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 or Section 5.02, as the case may be. Neither a contrary determination in the specific case under Section 5.03 nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the Director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5.05 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the Director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 5.06. Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a Director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article V. Such expenses (including attorneys' fees) incurred by former Directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 5.07. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate, these By-Laws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of

the persons specified in Section 5.01 and Section 5.02 shall be made to the fullest extent permitted by law. The provisions of this Article V shall not be deemed to preclude the indemnification of any person who is not specified in Section 5.01 or Section 5.02 but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 5.08. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Director or officer of the Corporation, or is or was a Director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article V.

Section 5.09. Certain Definitions. For purposes of this Article V, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article V shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article V, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article V.

Section 5.10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article V shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 5.11. Limitation on Indemnification. Notwithstanding anything contained in this Article V to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5.05), the Corporation shall not be obligated to indemnify any Director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board.

Section 5.12. Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation and employees or agents of the Corporation that are or were serving at the request of the Corporation as a director, officer, employee or

agent of another corporation, partnership, joint venture, trust or other enterprise, similar to those conferred in this Article V to Directors and officers of the Corporation.

ARTICLE VI
Capital Stock

Section 6.01. Stock Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. If shares are represented by certificates, each certificate shall be signed by, or in the name of, the Corporation by (i) the Chairman of the Board, the Chief Executive Officer, the President or any Vice President, and (ii) the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary. In addition, such certificates may be signed by a transfer agent of a registrar (other than the Corporation itself) and may be sealed with the seal of the Corporation or a facsimile thereof. Any or all of the signatures on such certificates may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of its issuance.

Each certificate representing shares shall state upon the face thereof: the name of the Corporation; that the Corporation is organized under the laws of Delaware; the name of the person or persons to whom issued; the number and class of shares and the designation of the series, if any, which such certificate represents; and the par value of each share represented by such certificate or a statement that the shares are without par value.

Section 6.02. Record Ownership. A record of the name of the person, firm or corporation and address of such holder of each certificate, the number of shares represented thereby and the date of issue thereof shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any person, whether or not it shall have express or other notice thereof, except as otherwise expressly required by applicable law.

Section 6.03. Transfer of Record Ownership. Transfers of stock shall be made on the books of the Corporation only by direction of the person named in the certificate or such person's attorney, lawfully constituted in writing, and only upon the surrender of the certificate therefor and a written assignment of the shares evidenced thereby. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and transferee request the Corporation to do so.

Section 6.04. Transfer Agent; Registrar; Rules Respecting Certificates. The Corporation shall maintain one or more transfer offices or agencies (which may include the Corporation) where stock of the Corporation shall be transferable. The Corporation shall also maintain one or more registry offices (which may include the Corporation) where such stock shall be registered. The Board may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock certificates in accordance with applicable law.

Section 6.05. Lost, Stolen or Destroyed Certificates. No certificate for shares of stock in the Corporation shall be issued in place of any certificate alleged to have been lost, destroyed or stolen, except on production of such evidence of such loss, destruction or theft and on delivery to the

Corporation of a bond of indemnity in such amount, upon such terms and secured by such surety, as the Board or any financial officer may in its or such person's discretion require. A new certificate may be issued without requiring any bond if the Board or such financial officer so determines.

ARTICLE VII
Contracts, Checks and Drafts, Deposits and Proxies

Section 7.01. Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 7.02. Checks and Drafts. All checks, drafts or other orders for the payment of money, issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by the Board.

Section 7.03. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as may be selected by or under the authority of the Board.

Section 7.04. Proxies. Unless otherwise provided by the Board, the Chairman of the Board, the Chief Executive Officer, the President or any Executive Vice President, Senior Vice President or Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

ARTICLE VIII
General Provisions

Section 8.01. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate, if any, may be declared by the Board at any regular or special meeting of the Board (or any action by written consent in lieu thereof in accordance with Section 3.09 hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board may modify or abolish any such reserve.

Section 8.02. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January in each year and shall end on the thirty-first day of December of such year.

Section 8.03. Seal. The corporate seal of the Corporation shall be circular in form and shall bear, in addition to any other emblem or device approved by the Board, the name of the Corporation, the year of its incorporation and the words "Corporate Seal" and "Delaware". The corporate seal may be used by causing it or a facsimile thereof to be impressed or reproduced or otherwise.

Section 8.04. Waivers of Notice. Whenever any notice is required by applicable law, the Certificate or these By-Laws, to be given to any Director, member of a Committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, or a waiver by electronic transmission by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the 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 annual or special meeting of stockholders or any regular or special meeting of the Board or members of a Committee of the Board need be specified in any written waiver of notice unless so required by law, the Certificate or these By-Laws.

ARTICLE IX
Amendment of By-Laws

Section 9.01. Amendment. Except as otherwise expressly provided in the Certificate, these By-Laws, or any of them, may from time to time be supplemented, amended or repealed, or new By-Laws may be adopted, by the Board at any regular or special meeting of the Board, if such supplement, amendment, repeal or adoption is approved by a majority of the entire Board.

Section 9.02. Entire Board of Directors. As used in this Article IX and in these By-Laws generally, the terms "entire Board" or "entire Board of Directors" mean the total number of Directors which the Corporation would have if there were no vacancies.

ARTICLE X
Emergency Provisions

Section 10.01. General. The provisions of this Article X shall be operative only during a national emergency declared by the President of the United States or the person performing the President's functions, or in the event of a nuclear, atomic or other attack on the United States or on a locality in which the Corporation conducts its principal business or customarily holds meetings of its Board or its stockholders, or during the existence of any other catastrophic event or similar emergency, as a result of which a quorum of the Board cannot readily be assembled for action. Said provisions in such event shall override all other By-Laws of the Corporation in conflict with any provisions of this Article X and shall remain operative during such emergency, but thereafter shall be inoperative; provided, that, all actions taken in good faith pursuant to such provisions shall thereafter remain in full force and effect unless and until revoked by action taken pursuant to the provisions of the By-Laws other than those contained in this Article X.

Section 10.02. Unavailable Directors. All Directors who are not available to perform their duties as Directors by reason of physical or mental incapacity or for any other reason or who are unwilling to perform their duties or whose whereabouts are unknown shall automatically cease to be Directors, with like effect as if such persons had resigned as Directors, so long as such unavailability continues.

Section 10.03. Authorized Number of Directors. The authorized number of Directors shall be the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02, or the minimum number required by applicable law, whichever number is greater.

Section 10.04. Quorum. The number of Directors necessary to constitute a quorum shall be one-third of the authorized number of Directors as specified in Section 10.03, or such other minimum number as, pursuant to the law or lawful decree then in force, it is possible for the by-laws of a corporation to specify.

Section 10.05. Creation of Emergency Committee. In the event the number of Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02 is less than the minimum number of authorized Directors required by law, then until the appointment of additional Directors to make up such required minimum, all the powers and authorities which the Board could by law delegate, including all powers and authorities which the Board could delegate to a Committee, shall be automatically vested in an emergency committee, and the emergency committee shall thereafter manage the affairs of the Corporation pursuant to such powers and authorities and shall have all other powers and authorities as may by law or lawful decree be conferred on any person or body of persons during a period of emergency.

Section 10.06. Constitution of Emergency Committee. The emergency committee shall consist of all the Directors remaining after eliminating those who have ceased to be Directors pursuant to Section 10.02, provided that such remaining Directors are not less than three in number. In the event such remaining Directors are less than three in number, the emergency committee shall consist of three persons, who shall be the remaining Director or Directors and either one or two officers or employees of the Corporation, as the remaining Director or Directors may in writing designate. If there is no remaining Director, the emergency committee shall consist of the three most senior officers of the Corporation who are available to serve, and if and to the extent that officers are not available, the most senior employees of the Corporation. Seniority shall be determined in accordance with any designation of seniority in the minutes of the proceedings of the Board, and in the absence of such designation, shall be determined by rate of remuneration.

Section 10.07. Powers of Emergency Committee. The emergency committee, once appointed, shall govern its own procedures and shall have power to increase the number of members thereof beyond the original number, and in the event of a vacancy or vacancies therein, arising at any time, the remaining member or members of the emergency committee shall have the power to fill such vacancy or vacancies. In the event at any time after its appointment all members of the emergency committee shall die or resign or become unavailable to act for any reason whatsoever, a new emergency committee shall be appointed in accordance with the foregoing provisions of this Article X.

Section 10.08. Directors Becoming Available. Any person who has ceased to be a Director pursuant to the provisions of Section 10.02 and who thereafter becomes available to serve as a Director shall automatically become a member of the emergency committee.

Section 10.09. Election of Board of Directors. The emergency committee shall, as soon after its appointment as is practicable, take all requisite action to secure the election of Directors, and upon such election all the powers and authorities of the emergency committee shall cease.

Section 10.10. Termination of Emergency Committee. In the event, after the appointment of an emergency committee, a sufficient number of persons who ceased to be Directors pursuant to Section 10.02 become available to serve as Directors, so that if they had not ceased to be

Directors as aforesaid, there would be sufficient Directors to constitute the minimum number of Directors required by law, then all such persons shall automatically be deemed to be reappointed as Directors and the powers and authorities of the emergency committee shall terminate.

Section 10.11. Nonexclusive Powers. The emergency powers provided in this Article X shall be in addition to any powers provided by applicable law.

EXHIBIT D

ARTICLE SEVENTH

Amendment of Certificate of Incorporation

The Corporation reserves the right to supplement, amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware and this Certificate of Incorporation, and all rights conferred upon stockholders, directors and officers herein are granted subject to this reservation. Notwithstanding the foregoing, this ARTICLE SEVENTH and sections (b) and (d) of ARTICLE FIFTH may not be supplemented, amended, altered, changed, or repealed in any respect, nor may any provision inconsistent therewith be adopted, unless such supplement, amendment, alteration, change or repeal is approved by the affirmative vote of the holders of ~~at least 80%~~ a majority of the combined voting power of the then outstanding shares of stock of all classes of the Corporation entitled to vote generally in the election of directors, voting together as a single class.