



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

DIVISION OF
CORPORATION FINANCE

February 14, 2018

Edward J. Lee
Wachtell, Lipton, Rosen & Katz
ejlee@wlrk.com

Re: United Technologies Corporation
Incoming letter dated December 28, 2017

Dear Mr. Lee:

This letter is in response to your correspondence dated December 28, 2017 and February 13, 2018 concerning the shareholder proposal (the "Proposal") submitted to United Technologies 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 14, 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

February 14, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: United Technologies 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 eliminate Article Ninth of the Company's certificate of incorporation. 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).

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.

February 13, 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
United Technologies Corporation (UTX)
Simple Majority Vote
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 2018 ratification of its auditors.

This is in contrast to what the company can do in obtaining a vote if it wants to. In the span of a year the company increased the approval of its executive pay from 61% to 90% in part through the use of the attached special solicitation – but no such luck in regard to the 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: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

Proposal: Advisory Vote on Executive Compensation

Proponent:

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

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

Proponent:

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

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

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

JOHN CHEVEDDEN

February 13, 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
United Technologies Corporation (UTX)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

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

There will be a response to the company letter today within 24-hours.

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: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

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STEVEN WINTER

February 13, 2018

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *United Technologies Corporation — 2018 Annual Meeting;
Securities Exchange Act of 1934; Rule 14a-8(j)*

Ladies and Gentlemen:

On December 28, 2017, we submitted a letter (the “No-Action Request”) on behalf of our client, United Technologies Corporation (the “Company”), requesting that the staff of the Division of Corporation Finance (the “Staff”) concur with the Company’s view that it may properly exclude a shareowner proposal (the “Proposal”) and statements in support thereof received from John Chevedden (the “Proponent”) from the proxy materials to be distributed by the Company in connection with its 2018 annual meeting of shareowners (the “2018 Proxy Materials”). The No-Action Request indicated our belief that the Proposal may be excluded from the 2018 Proxy

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Materials because the Company's Board of Directors (the "Board") was expected, at its meeting on February 5, 2018, to take action that would substantially implement the Proposal under Rule 14a-8(i)(10).

We write supplementally to confirm that at its meeting on February 5, 2018, the Board adopted a resolution approving, subject to shareowner approval, an amendment to the Company's Certificate of Incorporation (the "Certificate") to eliminate Article Ninth, which is the only provision in the Company's governing documents which includes a supermajority vote provision, from the Certificate in its entirety (the "Proposed Certificate Amendment"). The Proposed Certificate Amendment is set forth in Exhibit A attached hereto. Attached hereto as Exhibit B is a copy of correspondence between the Company and the proponent, through which the Company informed the proponent of the Board's action.

The Board also approved submission of the Proposed Certificate Amendment to a shareowner vote at the 2018 annual meeting of shareowners, which approval is required under Delaware law, and recommended that shareowners vote for the approval of the Proposed Certificate Amendment. If the Proposed Certificate Amendment receives the requisite shareowner approval, the Company's governing documents will no longer contain any supermajority voting requirements. Thus the Board has taken each of the actions requested by the Proposal. For these reasons, we believe the Proposal is excludable under Rule 14a-8(i)(10).

ANALYSIS

Rule 14a-8(i)(10) permits a company to exclude a shareowner proposal from its proxy materials if the company has substantially implemented the proposal. Applying this standard, the Staff has noted that a determination that the company has substantially implemented the proposal depends upon whether the company's particular policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 17, 2015); *Walgreen Co.* (avail. Sept. 26, 2013); *General Dynamics Corp.* (avail. Feb. 6, 2009). At the same time, as discussed in the No-Action Request, a company need not implement a proposal in exactly the same manner as set forth by the proponent as long as the proposal's "essential objective" is addressed. *See, e.g., Masco Corp.* (avail. Mar. 29, 1999); *MGM Resorts International* (avail. Feb. 28, 2012); *Exelon Corp.* (avail. Feb. 26, 2010).

Moreover, as discussed in the No-Action Request, the Staff consistently has granted no-action relief in situations where the board lacks unilateral authority to adopt amendments to a certificate of incorporation or bylaws, but has taken all of the steps within its power to eliminate the supermajority voting requirements in those documents and submitted the issue for shareowner approval. For instance, in *Becton, Dickinson and Co.* (avail. Nov. 27, 2012), the proponent requested that the board take the steps necessary so that each shareowner voting requirement in the charter and bylaws that calls for a greater than simple majority vote be changed to require a majority of the votes cast for and against such proposals. The company's board of directors

Office of Chief Counsel
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Page 3

authorized an amendment to the company's certificate of incorporation to remove the article that contained supermajority provisions from the company's certificate of incorporation in its entirety and committed to submitting such amendment to a vote of the company's shareowners at the subsequent annual meeting. The Staff concurred with the exclusion under Rule 14a-8(i)(10) stating that "it appears that [the company's] policies, practices, and procedures compare favorably with the guidelines of the proposal and that [the company] has, therefore substantially implemented the proposal." *See also, The Brink's Co.* (avail. Feb. 5, 2015) (concurring with exclusion of a simple majority proposal under Rule 14a-8(i)(10) in light of the company's "representation that Brink's will provide shareholders at Brink's 2015 annual meeting with an opportunity to approve amendments to Brink's articles of incorporation that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *The Home Depot, Inc.* (avail. Jan. 8, 2008) and *The Home Depot, Inc.* (avail. Mar. 28, 2002) (in both instances concurring with exclusion of proposals seeking simple majority vote requirements when the board authorized and submitted for shareowner approval an amendment to the company's certificate deleting the "fair price" provision from the certificate, which contained the only supermajority voting requirement).

Finally, the Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take a certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g., Medivation, Inc.* (avail. Mar. 13, 2015); *NETGEAR, Inc.* (avail. Mar. 31, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson & Johnson* (avail. Feb. 19, 2008); *Hewlett-Packard Co. (Steiner)* (avail. Dec. 11, 2007); *General Motors Corp.* (avail. Mar. 3, 2004); and *Intel Corp.* (avail. Mar. 11, 2003) (each granting no-action relief where the company notified the Staff of its intention to omit a shareowner proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

Accordingly, consistent with the precedents cited above, the "essential objective" of the Proposal has been satisfied, and the Proposal may be excluded from the 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

CONCLUSION

Based upon the foregoing analysis, we believe that the Proposal has been substantially implemented and, therefore, is excludable under Rule 14a-8(i)(10). Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we would appreciate the opportunity to confer with the Staff

Office of Chief Counsel
Division of Corporation Finance
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concerning these matters prior to the issuance of any written response to this letter. Please do not hesitate to contact the undersigned at (212) 403-1155 or EJLee@wlrk.com or Joshua R. Cammaker at (212) 403-1331 or JRCammaker@wlrk.com.

Very truly yours,



Edward J. Lee

cc: John Chevedden
Charles D. Gill, United Technologies Corporation
Peter J. Graber-Lipperman, United Technologies Corporation
Joshua R. Cammaker, Wachtell, Lipton, Rosen & Katz

Exhibit A

PROPOSED AMENDMENT TO THE CORPORATION'S RESTATED CERTIFICATE OF INCORPORATION

The Certificate of Incorporation would be amended and restated to reflect the following amendment:

~~NINTH: The stockholder vote required to approve Business Combinations (hereinafter defined) shall be as set forth in this Article Ninth. [Reserved](#)~~

~~SECTION 1. *Higher Vote for Business Combinations.* In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section 3 of this Article Ninth:~~

~~A. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or~~

~~B. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of \$25,000,000 or more; or~~

~~C. the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$25,000,000 or more; or~~

~~D. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or~~

~~E. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder;~~

~~shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article Ninth, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Fourth of this Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.~~

~~SECTION 2. *Definition of "Business Combination".* The term "Business Combination" as used in this Article Ninth shall mean any transaction which is referred to in any one or more of paragraphs A through E of Section 1.~~

~~SECTION 3. *When Higher Vote is Not Required.* The provisions of Section 1 of this Article Ninth shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their capacities as stockholders, the condition specified in the following paragraph A is met, or if in the case of any other Business Combination, the conditions specified in either of the following paragraphs A or B are met:~~

~~A. *Approval by Disinterested Directors.* The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).~~

~~B. *Price and Procedure Requirements.* All of the following conditions shall have been met:~~

~~(i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination (the "Consummation Date") of the consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be an amount at least equal to the higher of the following (it being intended that the requirements of this paragraph B(i) shall be required to be met with respect to all shares of Common Stock outstanding, whether or not the Interested Stockholder has previously acquired any shares of the Common Stock):~~

~~(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of Common Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of Common Stock; or~~

~~(b) the Fair Market Value per share of Common Stock on the Announcement Date.~~

~~(ii) The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of the consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock, other than the Common Stock, in such Business Combination shall be an amount at least equal to the highest of the following (it being intended that the requirements of this paragraph B (ii) shall be required to be met with respect to all shares of every such other class of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):~~

~~(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of such class of Voting Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of such class of Voting Stock;~~

~~(b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date; or~~

~~(c) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.~~

~~(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.~~

~~(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any~~

~~subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.~~

~~(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation.~~

~~(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).~~

SECTION 4. *Certain Definitions.* For the purposes of this Article Ninth:

~~A. A “person” shall mean any individual, firm, corporation or other entity.~~

~~B. “Interested Stockholder” shall mean any person (other than the Corporation or any Subsidiary) who or which:~~

~~(i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or~~

~~(ii) is an Affiliate of the Corporation and at any time within the two year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or~~

~~(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.~~

~~C. A person shall be a “beneficial owner” of any Voting Stock:~~

~~(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or~~

~~(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or~~

~~(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.~~

~~D. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Section 4, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Section 4 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.~~

~~E. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1983.~~

~~F. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph B of this Section 4, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.~~

~~G. "Disinterested Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.~~

~~H. "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.~~

~~I. In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in paragraph B(i) and (ii) of Section 3 of this Article Ninth shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.~~

~~SECTION 5. *Powers of Disinterested Directors.* A majority of the Disinterested Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article Ninth, including without limitation (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph B of Section 3 have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$25,000,000 or more; and the good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all the purposes of this Article Ninth.~~

~~SECTION 6. *No effect on Fiduciary Obligations of Interested Stockholders.* Nothing contained in this Article Ninth shall be construed to relieve the Board of Directors or any Interested Stockholder from any fiduciary obligation imposed by law.~~

~~SECTION 7. *Amendment, Repeal, etc.* Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the voting power of the shares of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with, this Article Ninth of this Certificate of Incorporation; provided, however, that the preceding provisions of this Section 7 shall not be applicable to any amendment to this Article Ninth of this Certificate of Incorporation, and such amendment shall require only such affirmative vote as is required by law and any other provisions of this Certificate of Incorporation, if such amendment shall have been approved by a majority of the Disinterested Directors.~~

Exhibit B

From: Graber-Lipperman, Peter J UTCHQ <Peter.Grabber-Lipperman@utc.com>
Sent: Thursday, February 08, 2018 6:14 PM
To: ***
Cc: DeVito, Eva (United Technologies Corporation)
Subject: UTC - Shareowner Proposal - Simple Majority Voting

Mr. Chevedden:

As promised, I am writing to update you on actions recently taken by the UTC Board of Directors relevant to your "Simple Majority Voting" proposal. During a regularly scheduled meeting held on February 5, 2018, the Board considered and adopted resolutions amending the UTC's Certificate of Incorporation to eliminate Article Ninth in its entirety. As you may recall from my prior note, Article Ninth is the only supermajority voting requirement in UTC's Certificate of Incorporation and/or Bylaws. The Board has also authorized management to (i) include the proposed amendment to the Certificate in UTC's 2018 Proxy Statement, (ii) submit the amendment to the shareowners for their approval at the 2018 Annual Meeting to be held on or about April 30, 2018, and (iii) recommend that the shareowners vote FOR the amendment. The Company intends to submit a letter to the SEC notifying the staff of the Board's actions as a supplement to our original request for a No Action Letter submitted on December 28, 2017.

The Company believes that the Board's actions described above substantially implement your proposal. If you agree, then please let me know as soon as possible if you wish to withdraw your proposal. Upon receipt of your written notice of withdrawal, the Company will notify the SEC staff that it is withdrawing its request for a No Action Letter. If there are reasons why you still believe it is necessary to submit your proposal despite the Board's action, then I am available to discuss your concerns with the aim of reaching a mutually agreeable resolution. In this regard, I would be interested to understand the "extra efforts" – as referenced in your January 23, 2018 email (pasted below) - you might propose the Company undertake in relation to the amendment of the Certificate to be voted upon by the shareowners at the Annual Meeting. In the event you choose not to withdraw your proposal, please note that the Company intends to submit the supplemental letter described above to the SEC no later than the middle of next week so that the staff has sufficient time to consider and act upon our request for a No Action Letter prior to the deadline for filing of UTC's preliminary 2018 Proxy Statement.

As always, thank you for your investment in UTC and your interest in the affairs of the Company. I look forward to hearing from you in the near term.

Sincerely,

Pete

Peter J. Graber-Lipperman
Corporate Vice President, Secretary & Associate General Counsel
United Technologies Corporation

Mr. Graber-Lipperman,

This is to propose for inclusion in the 2018 proxy that the company disclose in its Item 5.07

(within 4-days of the annual meeting) any extra efforts the company took to obtain the 80%-vote needed on one ballot item as compared to the company effort to obtain a 51% vote on other ballot items – if the 80%-vote is not obtained.

Sincerely,

John Chevedden

Subject:

FW: [External] Simple Majority Vote (UTX)

From:

Date: February 12, 2018 at 9:19:14 PM EST**To:** "Graber-Lipperman, Peter J UTCHQ" <Peter.Graber-Lipperman@utc.com>**Subject:** [External] Simple Majority Vote (UTX)

Mr. Graber-Lipperman,

There is no information on any extra effort the company might take given the overwhelming high vote that is needed.

Sincerely,

John Chevedden

From: ***
Sent: Tuesday, January 23, 2018 12:04 PM
To: Graber-Lipperman, Peter J UTCHQ <Peter.Grabber-Lipperman@utc.com>
Subject: [External] Proposal (UTX)

Mr. Graber-Lipperman,

This is to propose for inclusion in the 2018 proxy that the company disclose in its Item 5.07 (within 4-days of the annual meeting) any extra efforts the company took to obtain the 80%-vote needed on one ballot item as compared to the company effort to obtain a 51% vote on other ballot items – if the 80%-vote is not obtained.

Sincerely,

John Chevedden

JOHN CHEVEDDEN

January 14, 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
United Technologies Corporation (UTX)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

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

Perhaps the most important words in the company December 28, 2017 letter are on the next page.

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: Peter Graber-Lipperman <Peter.Graber-Lipperman@utc.com>

WACHTELL, LIPTON, ROSEN & KATZ

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
December 28, 2017
Page 3

In the event that the Board adopts

WACHTELL, LIPTON, ROSEN & KATZ

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ALISON ZIESKE PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. MCLEOD

December 28, 2017

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: *United Technologies Corporation — 2018 Annual Meeting;
Securities Exchange Act of 1934; Rule 14a-8(j)*

Ladies and Gentlemen:

This letter is submitted on behalf of our client, United Technologies Corporation, a Delaware corporation (the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to request that the Staff of the Division of Corporation Finance (the “Staff”) concur with the Company’s view that, for the reasons stated herein, it may properly exclude from the proxy materials to be distributed by the Company in connection with its 2018 annual meeting of shareholders (the “2018 Proxy Materials”) the shareholder proposal and supporting statement (the “Proposal”) submitted by Mr. John Chevedden (the “Proponent”), which are further described below and attached hereto as Exhibit A.

Office of Chief Counsel
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Page 2

Pursuant to Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), the Company is submitting this letter and its attachments to the Securities and Exchange Commission (the “Commission”) by email. In accordance with Rule 14a-8(j) of the Exchange Act, the Company is submitting this letter to the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission, and is simultaneously sending today a copy of this letter and its attachments to the Proponent as notice of the Company’s intention to omit the Proposal from the 2018 Proxy Materials. The Company will promptly forward to Mr. Chevedden any response from the Staff to this letter that the Staff transmits only to the Company.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform Mr. Chevedden that if he elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

THE PROPOSAL

The text of the resolution contained in the Proposal states:

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. It is important that our company take each step necessary to avoid a failed vote on this proposal topic.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Company may exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) upon confirmation that the Company’s Board of Directors (the “Board”) has approved the resolutions, described below, approving and submitting for shareholder approval at the 2018 annual meeting of shareholders the Certificate Amendment (as defined below) that will substantially implement the Proposal. Both the Governance & Public Policy Committee of the Board and the full Board will consider the resolutions at their next regularly scheduled meetings to be held on February 2, 2018 and February 5, 2018, respectively (collectively, the “February Board Meeting”).

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BACKGROUND

A. *The Proposal*

The Company received the initial version of the Proposal, accompanied by a cover letter from Mr. Chevedden, via email on September 27, 2017. On November 10, 2017, the Company received a revised version of the Proposal via email, accompanied by a cover letter from the Proponent. Copies of the Proposal, cover letters, and correspondence between the proponent and the Company are attached hereto as Exhibit A.

B. *The Anticipated Amendment to the Certificate of Incorporation*

The Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") contains one provision calling for a supermajority vote of shareholders, and the Company's Amended and Restated Bylaws (the "Bylaws") do not contain any such provisions.

Article Ninth of the Certificate of Incorporation currently requires a vote of 80% of the Company's outstanding shares to approve certain business combinations with a party that owns 10% or more of the Company's outstanding common stock or to repeal Article Ninth of the Certificate of Incorporation (the "Supermajority Provisions").

The Board discussed the proposal at its meeting held on December 13, 2017, and will consider, at the February Board Meeting, resolutions approving the elimination of the Supermajority Provisions in their entirety (the "Certificate Amendment"), declaring the Certificate Amendment advisable and in the best interests of the Company and its shareholders, directing that the Certificate Amendment be submitted to shareholders for adoption at the 2018 annual meeting and recommending that shareholders vote to adopt the Certificate Amendment.

The Certificate of Incorporation, marked to show the changes from the current version, that will be considered at the February Board Meeting is attached hereto as Exhibit B.

In the event that the Board adopts the resolutions described above, and the shareholders at the 2018 annual meeting approve the Certificate Amendment, there will be no supermajority provisions in the Certificate of Incorporation or the Bylaws and approval of any business combinations with interested shareholders would be subject to the approval of the requisite number of shareholders under the Delaware General Corporation Law (the "DGCL") and any future amendments to the Certificate of Incorporation would require the approval of a majority of the outstanding shares of common stock pursuant to Section 242 of the DGCL.

ANALYSIS

The Proposal May Be Excluded under Rule 14a-8(i)(10) because the Company Will Have Substantially Implemented the Proposal.

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A. *Rule 14a-8(i)(10) Background*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy solicitation materials if the company has already “substantially implemented” the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previously formalistic application” of the rule defeated its purpose, which is to “to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” See Exchange Act Release No. 34-40018 (May 21, 1988); Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”); Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be fully effected by a company to be excluded, provided that they have been “substantially implemented.” See 1983 Release.

Applying this standard, the Staff has permitted exclusion under Rule 14a-8(i)(10) when the company’s policies, practices and procedures compare favorably with the guidelines of the proposal. See, e.g., *Exxon Mobil Corp.* (avail. Mar. 17, 2015); *Walgreen Co.* (avail. Sept. 26, 2013); *General Dynamics Corp.* (avail. Feb. 6, 2009). The Staff has also permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. See, e.g., *Masco Corp.* (avail. Mar. 29, 1999); *MGM Resorts International* (avail. Feb. 28, 2012); *Exelon Corp.* (avail. Feb. 26, 2010).

The Staff has applied these standards to proposals, like the Proposal received by the Company, that seek to eliminate supermajority provisions contained in a specific article of a certificate of incorporation, and has agreed that such proposals could be substantially implemented by a board’s authorizing an amendment to the certificate of incorporation that seeks to delete the article containing supermajority voting requirements from the certificate of incorporation in its entirety upon shareholder approval. For instance, in *Becton, Dickinson and Co.* (avail. Nov. 27, 2012), the proponent requested that the board take the steps necessary so that each shareholder voting requirement in the charter and bylaws that calls for a greater than simple majority vote be changed to require a majority of the votes cast for and against such proposals. The company’s board of directors authorized an amendment to the company’s certificate of incorporation to remove the article that contained supermajority provisions from the company’s certificate of incorporation in its entirety and committed to submitting such amendment to a vote of the company’s shareholders at the subsequent annual meeting. The Staff concurred with the exclusion under Rule 14a-8(i)(10) stating that “it appears that [the company’s] policies, practices, and procedures compare favorably with the guidelines of the proposal and that [the company] has, therefore substantially implemented the proposal.” See also *The Home Depot, Inc.* (avail. Jan. 8, 2008) and *The Home Depot, Inc.* (avail. Mar. 28, 2002) (in both instances concurring with exclusion of proposals seeking simple majority vote requirements when the board authorized and submitted for shareholder approval an amendment to the company’s

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certificate deleting the “fair price” provision from the certificate, which contained the only supermajority voting requirement).

The Staff has also permitted exclusion of a proposal seeking to eliminate supermajority voting provisions where the board lacked unilateral authority to adopt the necessary amendments (which is the case with respect to amending the Certificate of Incorporation under the DGCL), but implemented the proposal by authorizing an amendment eliminating the supermajority provisions and submitting such amendment for shareholder approval at the next annual meeting of shareholders. *See, e.g., The Brink’s Co.* (avail. Feb. 5, 2015) (concurring with exclusion of a simple majority proposal under Rule 14a-8(i)(10) in light of the company’s “representation that Brink’s will provide shareholders at Brink’s 2015 annual meeting with an opportunity to approve amendments to Brink’s articles of incorporation that would replace each provision that calls for a supermajority vote with a majority vote requirement”).

B. The Essential Objective of the Proposal Is to Remove Any Supermajority Voting Requirements from the Certificate and the Bylaws

The essential objective of the Proposal is to remove the only supermajority provision in the Company’s Certificate and/or Bylaws — Article Ninth in the Certificate — and replace it with a majority voting standard. The supporting statement focuses on the fact that “certain issues” require a vote of more than 79%-of shareholders, which clearly refers to the 80% supermajority voting provisions in Article Ninth of the Company’s Restated Certificate of Incorporation (dated April 25, 2016) (the “Certificate”).

Applying the principles described above, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals that are substantially similar to the Proposal that sought to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here with respect to the Certificate Amendment), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See, e.g., QUALCOMM Inc.* (avail. Dec. 8, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [company’s] certificate of incorporation and bylaws”); *Korn/Ferry International* (avail. July 6, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, approval of which will result in the replacement of each of the supermajority voting requirements in the certificate of incorporation and bylaws that are applicable to [the company’s] common stock with a majority vote standard”); *The Southern Co.* (avail. Feb. 24, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve an amendment to [the company’s] certificate of incorporation, approval of which will result in replacement of

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Page 6

the only supermajority voting provision in [the company's] governing documents with a simple majority voting requirement"); *Dover Corp.* (avail. Dec. 16, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation, which, if approved, will eliminate the only two supermajority voting provisions in [the company's] governing documents"); *AECOM* (avail. Nov. 1, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve an amendment to [the company's] certificate of incorporation, approval of which will result in the removal of the lone supermajority voting provision in [the company's] governing documents"); *The Brink's Co.* (avail. Feb. 5, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] articles of incorporation that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *Visa Inc.* (avail. Nov. 14, 2014) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation and bylaws that would replace each provision that calls for a supermajority vote with a majority vote requirement"); *McKesson Corp.* (avail. Apr. 8, 2011) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company planned to provide shareholders at the next annual meeting "with an opportunity to approve amendments to [the company's] certificate of incorporation").

In addition, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of a proposal seeking to eliminate supermajority vote provisions where the amendments to the company's governing documents resulted in replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement, including where such voting requirement is pursuant to the DGCL, which will be the case following the Certificate Amendment. *See, e.g., QUALCOMM Inc.* (avail. Dec. 8, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendments to the company's certificate of incorporation and bylaws would result in a majority of the outstanding shares vote requirement pursuant to the DGCL); *Korn/Ferry International* (avail. July 6, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority vote of the voting power of the outstanding shares); *The Southern Co.* (avail. Feb. 24, 2017) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority of the issued and outstanding common stock vote requirement); *Dover Corp.* (avail. Dec. 16, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendments to the company's certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *AECOM* (avail. Nov. 1, 2016) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's certificate of incorporation would result in a majority of outstanding shares vote requirement pursuant to the DGCL); *The Brink's Co.* (avail. Feb. 5, 2015) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the amendment to the company's articles of incorporation would result in a

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majority of outstanding shares vote requirement pursuant to Virginia corporation law); *Visa Inc.* (avail. Nov. 14, 2014) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where amendments to the company's certificate of incorporation and bylaws would replace each supermajority vote requirement with a majority of the outstanding shares vote requirement); *Hewlett-Packard Co.* (avail. Dec. 19, 2013) (permitting exclusion of a proposal under Rule 14a-8(i)(10) where the bylaw amendments replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement "compare[d] favorably with the guidelines of the proposal").

As in the foregoing letters, the anticipated Certificate Amendment substantially implements the Proposal. If the recommended change to the Certificate of Incorporation is approved by the full Board at its regularly scheduled meeting on February 5, 2018, then the Board will authorize management to include the proposed change in the 2018 Proxy Materials and recommend that the shareholders vote to approve the proposed change to the Certificate of Incorporation at the 2018 Annual Meeting to be held on or about April 30, 2018. If the proposed change to the Certificate of Incorporation receives the requisite shareholder approval at the 2018 Annual Meeting, then the only supermajority voting provision in the Company's Certificate and Bylaws, collectively, would be removed.

*C. The Company Will Submit Supplemental Notification to the Staff
Following Board Action on Management's Recommendation*

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will submit a supplemental letter notifying the Staff of the Board's action on this matter, which will include a copy of the amendments approved by the Board, shortly after the February Board Meeting. The Staff consistently has granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take a certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g., Medivation, Inc.* (avail. Mar. 13, 2015); *NETGEAR, Inc.* (avail. Mar. 31, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Hewlett-Packard Co.* (avail. Dec. 19, 2013); *Starbucks Corp.* (avail. Nov. 27, 2012); *NiSource Inc.* (avail. Mar. 10, 2008); *Johnson & Johnson* (avail. Feb. 19, 2008); *Hewlett-Packard Co. (Steiner)* (avail. Dec. 11, 2007); *General Motors Corp.* (avail. Mar. 3, 2004); and *Intel Corp.* (avail. Mar. 11, 2003) (each granting no-action relief where the company notified the Staff of its intention to omit a shareholder proposal under Rule 14a-8(i)(10) because the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

Accordingly, the Company believes that once the Board takes the actions described above, the Proposal will have been substantially implemented and may be excluded under Rule 14a-8(i)(10).

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CONCLUSION

Based upon the foregoing analysis, we believe that once the Board adopts resolutions approving the Certificate Amendment, the Proposal will have been substantially implemented and, therefore, will be excludable under Rule 14a-8(i)(10). Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials in reliance on Rule 14a-8(i)(10).

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of any written response to this letter. Please do not hesitate to contact the undersigned at (212) 403-1155 or EJLee@wlrk.com or Joshua R. Cammaker at (212) 403-1331 or JRCammaker@wlrk.com.

Very truly yours,

A handwritten signature in blue ink that reads "Edward J. Lee". The signature is written in a cursive style with a large initial "E" and a long, sweeping tail.

Edward J. Lee

cc: John Chevedden
Charles D. Gill, United Technologies Corporation
Peter J. Graber-Lipperman, United Technologies Corporation
Joshua R. Cammaker, Wachtell, Lipton, Rosen & Katz

Exhibit A

From:

Sent: Wednesday, September 27, 2017 3:37 PM

To: GP UTCHQ Corp Secretary's Office <CORPSEC@CORPHQ.UTC.COM>

Cc: GP UTCHQ Investor Relations <InvRelations@CORPHQ.UTC.COM>

Subject: [External] Rule 14a-8 Proposal (UTX)``

Mr. Graber-Lipperman,

Please see the attached rule 14a-8 proposal to enhance long-term shareholder value at de minimis cost.

Sincerely,

John Chevedden

JOHN CHEVEDDEN

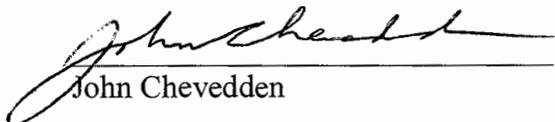
Mr. Peter J. Graber-Lipperman
Corporate Secretary
United Technologies Corporation (UTX)
10 Farm Springs Road
Farmington, CT 06032
PH: 860-728-7000
corpsec@corphq.utc.com
invrelations@corphq.utc.com

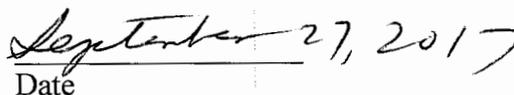
Dear Mr. Graber-Lipperman,

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. 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


Date

[UTX: Rule 14a-8 Proposal, September 27, 2017]
[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 east 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. It is important that our company take each step necessary to avoid a failed vote on this proposal topic.

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.

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.

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 our corporate governance.

Our company’s unrealized potential to improve its corporate governance (as reported in 2017) is an added incentive to take at least this one step forward for better governance and vote for this proposal:

United Technologies did not have an independent board chairman and our Lead Director, Edward Kangas, may be overburdened with 4 directorships at age 73.

There were related party transactions or other potential conflicts of interest involving the directors or senior managers

There was at least one director who had been flagged with being involved in one or more negative governance events in the course of their service at a previous company.

At least one director received a negative vote of 20% – indicating a higher than usual degree of shareholder dissatisfaction with that director’s performance.

United Technologies shareholders do not have the right to call a special meeting.

Returning to the core topic of this proposal from the context of our unrealized potential to improve corporate governance,

Please vote to enhance shareholder value:

John Chevedden,
proposal.

sponsors this

Notes:

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

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

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

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

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

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

From:

Sent: Friday, October 6, 2017 9:43 PM

To: GP UTCHQ Corp Secretary's Office <CORPSEC@CORPHQ.UTC.COM>; GP UTCHQ Investor Relations <InvRelations@CORPHQ.UTC.COM>

Subject: [External] Rule 14a-8 Proposal (UTX) blb

Mr. Peter J. Graber-Lipperman,
Please see the attached broker letter.
Sincerely,
John Chevedden



October 6, 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 September 1, 2016:

Security name	CUSIP	Trading symbol	Share quantity
United Technologies, Corp.	913017109	UTX	50
Welbilt, Inc.	949090104	WBT	200
Delta Air Lines, Inc.	247361702	DAL	100
Allegiant Travel Company	01748X102	ALGT	25
Jetblue Airways Corp.	477143101	JBLU	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: W002654-06OCT17

From:

Sent: Friday, November 10, 2017 9:51 PM

To: Graber-Lipperman, Peter J UTCHQ <Peter.Grabber-Lipperman@utc.com>

Cc: GP UTCHQ Corp Secretary's Office <CORPSEC@CORPHQ.UTC.COM>; GP UTCHQ Investor Relations <InvRelations@CORPHQ.UTC.COM>; GP UTCHQ Corp Secretary's Office <CORPSEC@CORPHQ.UTC.COM>

Subject: [External] Rule 14a-8 Proposal (UTX)``

Mr. Graber,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

Sincerely,

John Chevedden

JOHN CHEVEDDEN

Mr. Peter J. Graber-Lipperman
Corporate Secretary
United Technologies Corporation (UTX)
10 Farm Springs Road
Farmington, CT 06032
PH: 860-728-7000
corpsec@corphq.utc.com
invrelations@corphq.utc.com

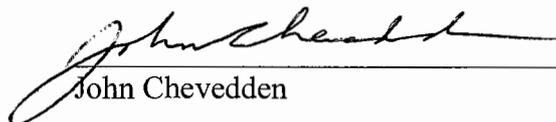
REVISED 10 NOV 2017

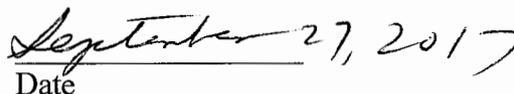
Dear Mr. Graber-Lipperman,

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. 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


Date

[UTX: Rule 14a-8 Proposal, September 27, 2017, Revised November 10, 2017]

[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. It is important that our company take each step necessary to avoid a failed vote on this proposal topic.

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.

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.

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 our corporate governance. Currently the role of shareholders is diminished at United Technologies because on certain issues a 79%-vote of shareholders is worthless.

Our company’s unrealized potential to improve its corporate governance (as reported in 2017) is an added incentive to take at least this one step forward for better governance and vote for this proposal:

United Technologies did not have an independent board chairman and our Lead Director, Edward Kangas, may be overburdened with 4 directorships at age 73.

There were related party transactions or other potential conflicts of interest involving the directors or senior managers.

There was at least one director who had been flagged with being involved in one or more negative governance events at a previous company.

At least one director received a negative vote of 20% – indicating a higher than usual degree of shareholder dissatisfaction with that director’s performance.

United Technologies shareholders do not have the right to call a special meeting.

Returning to the core topic of this proposal from the context of our unrealized potential to improve corporate governance,

Please vote to enhance shareholder value:

Simple Majority Vote – Proposal [4]

[The above line – *Is* for publication.]

John Chevedden,
proposal.

sponsors this

Notes:

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

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

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

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

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

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

From: "Graber-Lipperman, Peter J UTCHQ" <Peter.Grabber-Lipperman@utc.com>

Date: December 28, 2017 at 12:22:01 PM EST

To: *** " < *** >

Cc: "DeVito, Eva A UTCHQ" <Eva.DeVito@utc.com>

Subject: UTC Shareowner Proposal

*** EXTERNAL EMAIL ***

Mr. Chevedden:

Thank you, again, for making time to speak with me by telephone on December 11, 2017, regarding your "Simple Majority Voting" proposal. As I noted during our conversation, the Company's current Certificate of Incorporation contains one provision calling for a supermajority vote of shareholders, and the Company's current Bylaws do not contain any such provisions. Specifically, Article Ninth of the Certificate of Incorporation currently requires a vote of 80% of the Company's outstanding shares to approve certain business combinations with a party that owns 10% or more of the Company's outstanding common stock or to repeal Article Ninth of the Certificate of Incorporation. The Company believes that this provision, which was adopted by the shareowners in the mid-1980s, merits a fresh look.

Following our telephone conversation on December 11, your proposal was discussed during the UTC Board meeting held on December 13, 2017. As a result, both the Governance & Public Policy Committee of the Board and the full Board will consider resolutions at their next regularly scheduled meetings to be held in early February 2018 approving an amendment to the Certificate of Incorporation to eliminate Article Ninth in its entirety. If the Board adopts these resolutions, then the proposed amendment to the Certificate will be submitted to UTC's shareholders for their approval at the 2018 Annual Meeting.

The deadline for the Company to submit a request to the SEC Staff for a No Action Letter is [this Friday, December 29, 2017](#). The Company believes that the anticipated Board action described above would substantially implement your proposal. I recognize that until the Board takes such action, you may not wish to withdraw your proposal. If that is so, then the Company will submit a request for No Action Letter at this time, and I will reach out to you after the Board's February 2018 meeting to discuss whether you wish to withdraw the proposal should the Board adopt and recommend that the shareowners approve resolutions deleting Article Ninth from the Certificate of Incorporation.

Thank you for your investment in UTC and your interest in the affairs of the Company. I look forward to speaking with you again in the New Year.

Sincerely,

Pete

Peter J. Graber-Lipperman
Corporate Vice President, Secretary & Associate General Counsel
United Technologies Corporation

Sent from my iPad

Exhibit B

(CONFORMED COPY)

UNITED TECHNOLOGIES CORPORATION

Restated
Certificate of Incorporation

~~April 25, 2016~~
[\[●\], 2018](#)

RESTATED
CERTIFICATE OF INCORPORATION
of
UNITED TECHNOLOGIES CORPORATION

Pursuant to Section 245
of the General Corporation Law
of the State of Delaware

=====

Original Certificate of Incorporation filed
with the Secretary of State
of the State of Delaware
on July 21, 1934,
under the name
United Aircraft Corporation

=====

FIRST: The name of the Corporation is UNITED TECHNOLOGIES CORPORATION.

SECOND: Its registered office or place of business in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent is The Corporation Trust Company and the address of the said registered agent is Corporation Trust Center, 1209 Orange Street, in the said City of Wilmington.

THIRD: The nature of the business, or objects or purposes to be transacted, promoted or carried on, are those necessary to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of stock of all classes which the Corporation shall have authority to issue is 4,250,000,000 shares, of which 250,000,000 shares shall be Preferred Stock of the par value of \$1.00 each (hereinafter called "Preferred Stock") and 4,000,000,000 shares shall be Common Stock of the par value of \$1.00 each (hereinafter called "Common Stock").

The designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof of the shares of each class are as follows:

1. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed herein or in the resolution or resolutions providing for the issue of such series, adopted by the Board of Directors as hereinafter provided.

2. Authority is hereby expressly granted to the Board of Directors of the Corporation, subject to the provisions of this Article Fourth and to the limitations prescribed by law, to authorize the issue of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or noncumulative.

(c) Whether the shares of such series shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) Whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of stock of the

Corporation, and, if provision be made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange.

(f) The extent, if any, to which the holders of the shares of such series shall be entitled to vote with respect to the election of directors or otherwise.

(g) The restrictions, if any, on the issue or reissue or any additional Preferred Stock.

(h) The rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

3. Except as otherwise required by law and except for such voting powers with respect to the election of directors or other matters as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, the holders of any such series shall have no voting power whatsoever. Subject to such restrictions as may be stated in the resolution or resolutions of the Board of Directors providing for the issue of any series of Preferred Stock, any amendment to the Certificate of Incorporation which shall increase or decrease the authorized stock of any class or classes may be adopted by the affirmative vote of the holders of a majority of the outstanding shares of the voting stock of the Corporation.

4. No holder of stock of any class of the Corporation shall as such holder have any preemptive or preferential right of subscription to any stock of any class of the Corporation or to any obligations convertible into stock of the Corporation, issued or sold, or to any right of subscription to, or to any warrant or option for the purchase of any thereof, other than such (if any) as the Board of Directors of the Corporation, in its discretion, may determine from time to time.

5. The Corporation may from time to time issue and dispose of any of the authorized and unissued shares of Common Stock or of Preferred Stock for such consideration, not less than its par value, as may be fixed from time to time by the Board of Directors, without action by the stockholders. The Board of Directors may provide for payment therefor to be received by the Corporation in cash, property or services. Any and all such shares of the Preferred or Common Stock of the Corporation the issuance of which has been so authorized, and for which consideration so fixed by the Board of Directors has been paid or delivered, shall be deemed full paid stock and shall not be liable to any further call or assessment thereon.

FIFTH: The minimum amount of capital with which the Corporation will commence business is One Thousand Dollars.

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders shall not be subject to the payment of corporate debts.

EIGHTH: Subject to the provisions of the laws of the State of Delaware, the following provisions are adopted for the management of the business and for the conduct of the affairs of the Corporation, and for defining, limiting and regulating the powers of the Corporation, the directors and the stockholders:

(a) The books of the Corporation may be kept outside the State of Delaware at such place or places as may, from time to time, be designated by the Board of Directors.

(b) The business of the Corporation shall be managed by its Board of Directors; and the Board of Directors shall have power to exercise all the powers of the Corporation, including (but without limiting the generality hereof) the power to create mortgages upon the whole or any part of the property of the Corporation, real or personal, without any action of or by the stockholders, except as otherwise provided by statute or by the Bylaws.

(c) The number of the directors shall be fixed by the Bylaws, subject to alteration, from time to time, by amendment of the Bylaws either by the Board of Directors or the stockholders. An increase in the number of directors shall be deemed to create vacancies in the Board, to be filled in the manner provided in the Bylaws. Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time, in such manner as shall be provided in the Bylaws.

(d) The Board of Directors shall have power to make and alter Bylaws, *subject* to such restrictions upon the exercise of such power as may be imposed by the incorporators or the stockholders in any Bylaws adopted by them from time to time.

(e) The Board of Directors shall have power, in its discretion, to fix, determine and vary, from time to time, the amount to be retained as surplus and the amount or amounts to be set apart out of any of the funds of the Corporation available for dividends as working capital or a reserve or reserves for any proper purpose, and to abolish any such reserve in the manner in which it was created.

(f) The Board of Directors shall have power, in its discretion, from time to time, to determine whether and to what extent and at what times and places and under what conditions and regulations the books and accounts of the Corporation, or any of them, other than the stock ledger, shall be open to the inspection of stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by law or authorized by resolution of the directors or of the stockholders.

(g) Upon any sale, exchange or other disposal of the property and/or assets of the Corporation, payment therefor may be made either to the Corporation or directly to the stockholders in proportion to their interests, upon the surrender of their respective stock certificates, or otherwise, as the Board of Directors may determine.

(h) [Reserved].

(i) In case the Corporation shall enter into any contract or transact any business with one or more of its directors, or with any firm of which any director is a member, or with any corporation or association of which any director is a stockholder, director or officer, such contract or transaction shall not be invalidated or in any way affected by the fact that such director has or may have an interest therein which is or might be adverse to the interests of the Corporation, even though the vote of such director might have been necessary to obligate the Corporation upon such contract or transaction; *provided*, that the fact of such interest shall have been disclosed to the other directors or the stockholders of the Corporation, as the case may be, acting upon or with reference to such contract or transaction.

(j) Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this

Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

(k) The Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute; and all rights herein conferred are granted subject to this reservation.

~~NINTH: The stockholder vote required to approve Business Combinations (hereinafter defined) shall be as set forth in this Article Ninth.~~

~~SECTION 1. *Higher Vote for Business Combinations.* In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section 3 of this Article Ninth:~~

~~A.— any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or~~

~~B.— any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of \$25,000,000 or more; or~~

~~C.— the issuance or transfer by the Corporation or any subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$25,000,000 or more; or~~

~~D.— the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or~~

~~E.— any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder;~~

~~shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the “Voting Stock”), voting together as a single class (it being understood that for purposes of this Article Ninth, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Fourth of this~~

Certificate of Incorporation). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

~~SECTION 2. *Definition of “Business Combination”.* The term “Business Combination” as used in this Article Ninth shall mean any transaction which is referred to in any one or more of paragraphs A through E of Section 1.~~

~~SECTION 3. *When Higher Vote is Not Required.* The provisions of Section 1 of this Article Ninth shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their capacities as stockholders, the condition specified in the following paragraph A is met, or if in the case of any other Business Combination, the conditions specified in either of the following paragraphs A or B are met:~~

~~A. — *Approval by Disinterested Directors.* The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).~~

~~B. — *Price and Procedure Requirements.* All of the following conditions shall have been met:~~

~~(i) — The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination (the “Consummation Date”) of the consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be an amount at least equal to the higher of the following (it being intended that the requirements of this paragraph B(i) shall be required to be met with respect to all shares of Common Stock outstanding, whether or not the Interested Stockholder has previously acquired any shares of the Common Stock):~~

~~(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers’ fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two year period immediately prior to the first public announcement of the proposal of the Business Combination (the “Announcement Date”) or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of Common Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of Common Stock; or~~

~~(b) the Fair Market Value per share of Common Stock on the Announcement Date.~~

~~(ii) — The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of the consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock, other than the Common Stock, in such Business Combination shall be an amount at least equal to the highest of the following (it being intended that the requirements of this paragraph B (ii) shall be required to be met with respect to all shares of every such other class of~~

outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

~~(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher, plus interest compounded annually from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date at the prime rate of interest of Citibank, N.A. (or other major bank headquartered in New York City selected by a majority of the Disinterested Directors) from time to time in effect in New York City, less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid in other than cash, per share of such class of Voting Stock from the date on which the Interested Stockholder became an Interested Stockholder through the Consummation Date in an amount up to but not exceeding the amount of such interest payable per share of such class of Voting Stock;~~

~~(b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date;~~
~~or~~

~~(c) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.~~

~~(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.~~

~~(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.~~

~~(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation.~~

~~(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations~~

~~thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions);~~

~~SECTION 4. *Certain Definitions.* For the purposes of this Article Ninth:~~

~~A. A “person” shall mean any individual, firm, corporation or other entity.~~

~~B. “Interested Stockholder” shall mean any person (other than the Corporation or any Subsidiary) who or which:~~

~~(i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or~~

~~(ii) is an Affiliate of the Corporation and at any time within the two year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or~~

~~(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.~~

~~C. A person shall be a “beneficial owner” of any Voting Stock:~~

~~(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or~~

~~(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or~~

~~(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.~~

~~D. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Section 4, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Section 4 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.~~

~~E. “Affiliate” or “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1983.~~

~~F. “Subsidiary” means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph B of this Section 4, the term “Subsidiary” shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.~~

~~G. “Disinterested Director” means any member of the Board of Directors of the Corporation (the “Board”) who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board.~~

~~H. “Fair Market Value” means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Disinterested Directors in good faith.~~

~~I. In the event of any Business Combination in which the Corporation survives, the phrase “consideration other than cash to be received” as used in paragraph B(i) and (ii) of Section 3 of this Article Ninth shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.~~

~~SECTION 5. *Powers of Disinterested Directors.* A majority of the Disinterested Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article Ninth, including without limitation (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph B of Section 3 have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$25,000,000 or more; and the good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all the purposes of this Article Ninth.~~

~~SECTION 6. *No effect on Fiduciary Obligations of Interested Stockholders.* Nothing contained in this Article Ninth shall be construed to relieve the Board of Directors or any Interested Stockholder from any fiduciary obligation imposed by law.~~

~~SECTION 7. *Amendment, Repeal, etc.* Notwithstanding any other provisions of this Certificate of Incorporation or the Bylaws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or the Bylaws of the Corporation), the affirmative vote of the holders of 80% or more of the voting power of the shares of the then outstanding Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with,~~

~~this Article Ninth of this Certificate of Incorporation; provided, however, that the preceding provisions of this Section 7 shall not be applicable to any amendment to this Article Ninth of this Certificate of Incorporation, and such amendment shall require only such affirmative vote as is required by law and any other provisions of this Certificate of Incorporation, if such amendment shall have been approved by a majority of the Disinterested Directors.~~ TENTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law for payment of unlawful dividends or unlawful stock repurchases or redemption, or (iv) for any transaction from which the director derived an improper personal benefit.