



DIVISION OF  
CORPORATION FINANCE

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

March 1, 2018

Darren A. Dragovich  
The Western Union Company  
darren.dragovich@westernunion.com

Re: The Western Union Company  
Incoming letter dated January 4, 2018

Dear Mr. Dragovich:

This letter is in response to your correspondence dated January 4, 2018 and February 23, 2018, concerning the shareholder proposal (the "Proposal") submitted to The Western Union Company (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 8, 2018, January 12, 2018, January 15, 2018 and January 16, 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

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March 1, 2018

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

Re: The Western Union Company  
Incoming letter dated January 4, 2018

The Proposal asks the board to take the steps necessary (unilaterally if possible) to amend the bylaws and each appropriate governing document to give holders in the aggregate of 10% of the Company's outstanding common stock the power to call a special shareowner meeting.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(10). We note your representation that the board has approved, and will submit for a shareholder vote at the Company's 2018 annual meeting, an amendment to reduce the threshold for calling a special meeting to 10% of the Company's outstanding capital stock held in a net long position continuously for at least one year. 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 23, 2018

*Via Electronic Mail*

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

Re: The Western Union Company – Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

On January 4, 2018, The Western Union Company, a Delaware corporation (the “Company”), submitted a letter (the “No-Action Request”) notifying the staff of the Division of Corporation Finance (the “Staff”) that the Company intends to omit from its proxy materials for its 2018 Annual Meeting of Stockholders (the “2018 Annual Meeting,” and such materials, the “2018 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof submitted by John Chevedden (the “Proponent”). The Proposal presents the following resolution: “Resolved, [s]hareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board’s current power to call a special meeting.”

In accordance with *Staff Legal Bulletin 14D* (“SLB 14D”), this letter and its exhibits are being submitted via e-mail. A copy of this letter and its exhibits will also be sent to the Proponent. Pursuant to Rule 14a-8(k) and SLB 14D, the Company requests that the Proponent copy the undersigned on any correspondence that it elects to submit to the Staff in response to this letter.

#### **Basis for Supplemental Letter**

The No-Action Request indicated the Company’s belief that the Proposal may be excluded from the 2018 Proxy Materials because the Company expected that the Board of Directors of the Company (the “Board”) would approve the inclusion of a proposal in its 2018 Proxy Materials recommending that stockholders approve an amendment to the Company’s Amended and Restated Certificate of Incorporation (the “Charter”) to allow a special meeting of stockholders to be called upon the request of one or more stockholders of record of the Company holding 10% or more of the Company’s capital stock, under certain circumstances (the “Company Proposal”). Because the Board lacks unilateral authority to amend the Charter under Delaware law, submission of the Company Proposal for a vote by the stockholders will fully

implement the Proposal to the greatest extent allowed by applicable law and the Company's governing documents, thereby rendering the Proposal excludable as substantially implemented in reliance on Rule 14a-8(i)(10). In addition, a corresponding amendment to the Company's By-Laws (the "By-Laws"), will be approved and effective if and when the amendment to the Charter becomes effective.

The Company submitted the No-Action Request prior to the Board's approval of the Company Proposal in order to address the timing requirements of Rule 14a-8(j). This supplemental letter confirms that, at a February 22, 2018 meeting, the Board approved the Company Proposal and the corresponding amendment to the Charter, subject to the approval of the Company's stockholders at the 2018 Annual Meeting. A copy of the Company Proposal, substantially in the form to be presented at the 2018 Annual Meeting, including the proposed amendments to the Charter and By-laws, is attached hereto as Exhibit A. Notably, the only proposed change to the Company's Charter and By-laws is a reduction in the existing special meeting threshold of 20% to 10% of the Company's outstanding capital stock.

By approving the applicable amendment to the Charter and submitting the Company Proposal for approval by the Company's stockholders, with the corresponding amendment to the By-Laws to be approved and effective if and when the amendment to the Charter becomes effective, the Board is taking all steps permitted by applicable law to fully implement the Proposal and no further action on its part is needed to fully implement the Proposal.

**Conclusion**

Based on the foregoing, I respectfully request your concurrence that the Proposal may be excluded from the Company's 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact the undersigned by phone at 720-332-5711.

Very truly yours,



Darren A. Dragovich

Vice President and Associate General Counsel

Attachments

cc: John Chevedden

**Exhibit A**

[See attached.]

# PROPOSAL 4

## APPROVAL OF AMENDMENT TO THE CHARTER TO REDUCE THE THRESHOLD STOCK OWNERSHIP REQUIREMENT FOR STOCKHOLDERS TO CALL A SPECIAL MEETING

After careful consideration, including discussions with many of our large stockholders, and upon the recommendation of the Corporate Governance and Public Policy Committee, our Board recommends that stockholders vote **"FOR"** the proposal to amend our Amended and Restated Certificate of Incorporation (the "Charter") to reduce the threshold ownership requirement for stockholders to call a special

meeting. This amendment would permit stockholders who own at least 10% of our outstanding capital stock in the aggregate to call a special meeting of stockholders. The current minimum stock ownership requirement to call a special meeting is 20% of our outstanding capital stock, as further detailed below.

**Existing Ownership Threshold.** Under our current Charter and By-Laws, one or more stockholders of record that together have continuously held, for their own account or on behalf of others, beneficial ownership of at least a 20% aggregate "net long position" of the Company's outstanding capital stock for at least one year prior to the date such request is delivered have the ability to require the Company to call a special meeting of its stockholders. Stock ownership is determined under a "net long position" standard to provide assurance that stockholders seeking to call a special meeting possess both (i) full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares.

**Amended Ownership Threshold.** Pursuant to the proposed amendment to the Charter and the corresponding amendment to the By-Laws, the minimum ownership threshold would be reduced from 20% to 10%. No other provisions of the Charter or By-Laws would be amended in connection with this action.

**Background.** At the Company's 2017 Annual Meeting of Stockholders (the "2017 Annual Meeting"), a stockholder proposal requesting that the Board "undertake such steps as may be necessary to permit written consent by shareholders..." received approximately 51% approval. In light of the outcome of the stockholder vote on this proposal, the Board and the Corporate Governance and Public Policy Committee considered possible amendments to the Company's Charter and By-Laws in response. The

Board and the Corporate Governance and Public Policy Committee considered adopting various forms of a mechanism to permit written consent by stockholders and also considered lowering the ownership threshold of the Company's existing right for stockholders to call a special meeting. Taking no action was also considered.

The Company sought to engage with its top 25 stockholders to inform the Board and the Corporate Governance and Public Policy Committee of stockholder preferences as part of the process to determine the most appropriate action in response to the stockholder vote on the written consent proposal at the 2017 Annual Meeting. The stockholders in this group who agreed to speak with the Company are believed by the Company to have held approximately 50.7% of the Company's outstanding stock as of September 30, 2017. The holders of a significant majority of the common stock represented in this group (approximately 32% of the Company's outstanding stock as of September 30, 2017) expressed a preference for the Company to reduce its ownership threshold for stockholders to call a special meeting to a range between 10% and 15%. With this information, the Corporate Governance and Public Policy Committee recommended to the Board that the Charter and By-Laws be amended to reduce the minimum stock ownership requirement to call a special meeting to 10% of the Company's outstanding capital stock. The Board approved the proposed amendment to the Charter, subject to stockholder approval. In addition, the Board will approve a corresponding amendment to our By-Laws, if and when the amendment to the Charter becomes effective.

The Board is strongly committed to good corporate governance and continues to support the practice of permitting stockholders to request special meetings, provided that the meeting is called by stockholders owning a significant percentage of the shares of the Company. The Board determined that it is consistent with best corporate governance practices and in the best interests of the Company and its stockholders to amend the Charter and the By-Laws to permit stockholders who hold 10% or more of the Company's outstanding capital stock to call special meetings, subject to the procedures and other requirements as provided in the By-Laws.

The Board continues to believe that special meetings should only be called to consider extraordinary events that are of interest to a broad base of stockholders that cannot be delayed until the next annual meeting. The Board also believes that establishing a 10% ownership threshold to request a special meeting strikes a reasonable balance between enhancing stockholder rights and protecting against the risk that a small minority of stockholders, including stockholders with special interests, could call one or more special meetings that could result in unnecessary financial expense and disruption to our business. For every special meeting, the Company is required to provide each stockholder a notice of meeting and proxy materials, which results in significant legal, printing and mailing and administrative expenses, as well as other costs normally associated with holding a stockholder meeting. Additionally, preparing for stockholder meetings requires significant attention of the Company's directors, officers and employees, diverting their attention away from performing their primary function, which is to operate the Company's business in the best interests of

the stockholders. Likewise, the Board believes that only stockholders with a true economic and non-transitory interest in the Company should be entitled to utilize the special meeting mechanism.

This description of the proposed amendment to the Charter is qualified by the full text of the amendment to Article Seventh, Section B, of the Charter, which is attached to this Proxy Statement as Annex B. In addition, this description of the proposed amendment to the By-Laws is qualified by the full text of the amendment to Article II, Section 3, of the By-Laws, which is attached to this Proxy Statement as Annex C. In both Annex B and Annex C, additions of text to our Charter and By-Laws, respectively, are indicated by underlining and deletions of text are indicated by strike-outs.

**Required Vote**

The proposed amendment to our Charter requires the affirmative vote of a majority of the outstanding shares of common stock entitled to vote on the subject matter. If this proposal to amend our Charter is approved by our stockholders, the resulting Charter will be filed with the Secretary of State of the State of Delaware shortly after the Annual Meeting. The Board will also approve the proposed corresponding amendment to the By-Laws if and when the amendment to the Charter becomes effective. If this proposal to amend our Charter is not adopted and approved, the corresponding amendment to the By-Laws will not become effective, and the current right of holders of record of at least 20% of the Company's outstanding capital stock to call a special meeting will remain unchanged.

**THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR PROPOSAL 4.**

## ANNEX B

### PROPOSED AMENDMENT TO ARTICLE SEVENTH, SECTION B OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE WESTERN UNION COMPANY TO PROVIDE HOLDERS OF RECORD OF AT LEAST 10% OF THE COMPANY'S OUTSTANDING CAPITAL STOCK WITH THE RIGHT TO CALL SPECIAL MEETINGS OF STOCKHOLDERS

B. Unless otherwise prescribed by law or by this Certificate of Incorporation (including any Certificates of Designation with respect to any Preferred Stock, the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called only by the officers and directors or holders of record of at least ~~20%~~ 10% aggregate of the outstanding capital stock of the Corporation, subject to the procedures and other requirements as provided in the By-Laws of the Corporation.

# ANNEX C

## PROPOSED AMENDMENT TO ARTICLE II, SECTION 3 OF THE BY-LAWS OF THE WESTERN UNION COMPANY TO PROVIDE HOLDERS OF RECORD OF AT LEAST 10% OF THE COMPANY'S OUTSTANDING CAPITAL STOCK WITH THE RIGHT TO CALL SPECIAL MEETINGS OF STOCKHOLDERS

### ARTICLE II MEETINGS OF STOCKHOLDERS

Section 3. Special Meetings. (a) Unless otherwise prescribed by law or by the Certificate of Incorporation (including any Certificates of Designation with respect to any Preferred Stock, the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by: (i) the Chairman of the Board of Directors; (ii) the Chief Executive Officer; (iii) the President, if there be one; (iv) the Secretary; (v) the Chairman of the Governance Committee; or (vi) any such officer at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting.

(b) Subject to this Section 3(b) and other applicable provisions of these By-laws, a Special Meeting of Stockholders shall be called by the Secretary upon the written request (each such request, a "Special Meeting Request" and such meeting, a "Stockholder Requested Special Meeting") of one or more stockholders of record of the Corporation that together have continuously held, for their own account or on behalf of others, beneficial ownership of at least a ~~twenty ten~~ percent (~~20%~~ 10%) aggregate "net long position" of the capital stock issued and outstanding (the "Requisite Percentage") for at least one year prior to the date such request is delivered to the Corporation (such period, the "One-Year Period"). For purposes of determining the Requisite Percentage, "net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"); provided that (x) for purposes of such definition, (A) "the date that a tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request, (B) the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of capital stock on the New York Stock Exchange (or any successor thereto) on such date (or, if such date is not a trading day, the next succeeding trading day), (C) the "person whose securities are the subject of the offer" shall refer to the Corporation, and (D) a "subject security" shall refer to the outstanding capital stock; and (y) the net long position of such holder shall be reduced by the number of shares of capital stock as to which such holder

does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such holder has, at any time during the One-Year Period, entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting holders have complied with the requirements of this Section 3(b) and related provisions of these By-laws shall be determined in good faith by the Board of Directors or its designees, which determination shall be conclusive and binding on the Corporation and the stockholders.

(c) In order for a Stockholder Requested Special Meeting to be called, one or more Special Meeting Requests must be signed by the Requisite Percentage of stockholders submitting such request and by each of the beneficial owners, if any, on whose behalf the Special Meeting Request is being made and must be delivered to the Secretary. The Special Meeting Request(s) shall be delivered to the Secretary at the principal executive offices of the Corporation by nationally recognized private overnight courier service, return receipt requested. Each Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the Stockholder Requested Special Meeting and the matters proposed to be acted on at it, (ii) bear the date of signature of each such stockholder signing the Special Meeting Request, (iii) set forth (A) the name and address, as they appear in the Corporation's books, of each stockholder signing such request and the beneficial owners, if any, on whose behalf such request is made and (B) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the Exchange Act) by each such stockholder and the beneficial owners, if any, on whose behalf such request is made, (iv) set forth any material interest of each stockholder signing the Special Meeting Request in the business desired to be brought before the Stockholder Requested Special Meeting, (v) include documentary evidence that the stockholders requesting the special meeting own the Requisite Percentage as of the date on which the Special Meeting Request is delivered to the Secretary of the Corporation; provided, however, that if the stockholders are not the beneficial owners of the shares constituting all or part of the Requisite Percentage, then to

be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary of the Corporation within ten (10) days after the date on which the Special Meeting Request is delivered to the Secretary of the Corporation) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own such shares as of the date on which such Special Meeting Request is delivered to the Secretary, (vi) an agreement by each of the stockholders requesting the special meeting and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made to notify the Corporation promptly in the event of any decrease in the net long position held by such stockholder or beneficial owner following the delivery of such Special Meeting Request and prior to the Stockholder Requested Special Meeting and an acknowledgement that any such decrease shall be deemed to be a revocation of such Special Meeting Request by such stockholder or beneficial owner to the extent of such reduction, (vii) contain any other information that would be required to be provided by a stockholder seeking to bring an item of business before an annual meeting of stockholders pursuant to Article II, Section 9 of these By-laws, and, (viii) if the purpose of the Stockholder Requested Special Meeting includes the election of one or more Directors, contain any other information that would be required to be set forth with respect to a proposed nominee pursuant to Article II, Section 8 of these By-laws. Each Stockholder making a Special Meeting Request and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made is required to update such Special Meeting Request delivered pursuant to this Section 3 in accordance with the requirements of Article II, Sections 8 and 9 of these By-laws. Any requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the Stockholder Requested Special Meeting by written revocation delivered to the Secretary of the Corporation at the principal executive offices of the Corporation. If at any time after sixty (60) days following the earliest dated Special Meeting Request, the unrevoked (whether by specific written revocation or by a reduction in the net long position held by such Stockholder, as described above) valid Special Meeting Requests represent in the aggregate less than the Requisite Percentage, there shall be no requirement to hold a Stockholder Requested Special Meeting.

(d) In determining whether Special Meeting Requests have met the requirements of this Section 3, multiple Special Meeting Requests will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the requested special meeting and substantially the same matters proposed to be acted on at the Stockholder Requested Special Meeting (in each case as determined in good faith by the Board), and (ii) such Special

Meeting Requests have been delivered to the Secretary within 60 days of the delivery to the Secretary of the earliest dated Special Meeting Request relating to such item(s) of business.

(e) If none of the stockholders who submitted a Special Meeting Request appears or sends a qualified representative to present the item of business submitted by the stockholders for consideration at the Stockholder Requested Special Meeting, such item of business shall not be submitted for vote of the stockholders at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation or such stockholder(s).

(f) Except as provided in the next sentence, a Stockholder Requested Special Meeting shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any such Stockholder Requested Special Meeting shall be not more than ninety (90) days after the date on which valid Special Meeting Request(s) constituting the Requisite Percent are delivered to the Secretary of the Corporation (such date of delivery being the "Delivery Date"). Notwithstanding the foregoing, the Secretary of the Corporation shall not be required to call a Stockholder Requested Special Meeting if (i) the Board of Directors calls an annual meeting of stockholders, or a special meeting of stockholders at which a Similar Item (as defined in this Section 3(f)) is to be presented pursuant to the notice of such meeting, in either case to be held not later than sixty (60) days after the Delivery Date; (ii) the Delivery Date is during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the earlier of (A) the date of the next annual meeting and (B) thirty (30) days after the first anniversary of the date of the immediately preceding annual meeting; or (iii) the Special Meeting Request(s) (A) contain an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item") to an item that was presented at any meeting of stockholders held not more than one hundred and twenty (120) days before the Delivery Date (and, for purposes of this clause (iii) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors); (B) relate to an item of business that is not a proper subject for action by the stockholders under applicable law; (C) were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law or would cause the Corporation to violate any law; or (D) do not comply with the provisions of this Section 3. The procedures set forth in this Section 3 are the exclusive means by which items of business may be raised by stockholders at a Stockholder Requested Special Meeting.

(g) Written notice of a special meeting stating the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. Any notice relating to a special meeting appropriately called pursuant to

this Section 3 shall describe the item or items of business to be considered at such special meeting. Business transacted at any special meeting shall be limited to the matters identified in the Corporation's notice given pursuant to this Section 3; provided, however, that nothing herein shall prohibit the Board of Directors from including in such notice and submitting to the Stockholders additional matters to be considered at any Stockholder Requested Special Meeting.

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January 16, 2018

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

**# 4 Rule 14a-8 Proposal**  
**The Western Union Company (WU)**  
**Guessing Game No Action Request**  
**Special Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 4, 2018 no-action request.

This could be referred to a guessing game no action request.

The company has the power to spring a surprise on the Staff and on the proponent on February 24, 2018 in regard to the details of its “under certain circumstances” limitations. This is at a time when the backlog of no action requests is perhaps at its peak.

According to the company letter the company potentially has 90-days to decide how to respond to the rule 14a-8 proposal that was submitted to the company on November 24, 2018.

According to the company it can keep secret the details of its “under certain circumstances” limitations until February 24, 2018. Then the proponent could potentially have 24-hours for a jack-rabbit response to the company revelation of the details of its “under certain circumstances” limitations. Meanwhile the company can issue reminders that its printing press is being held up.

Plus the company in secrecy does not even commit in its January 4, 2018 letter to making a meaningful change or a well-established change sometime in February consistent with the focus of the proposal.

For instance the final company outcome could be trivial or negative – like enabling 10% of the Company’s capital stock to call a special meeting if the supporting stock is held for a continuous 5-years or if one person owns \$1 Billion of company stock (10%).

Such secrecy could also mask a governance novelty that might take a while to marshal an effective rebuttal to.

Plus there is strong shareholder support for improving the governance of the company. A shareholder proposals for written consent won 51% support at the company 2017 annual meeting. This is also noted in the supporting statement of the 2018 proposal.

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: Darren A. Dragovich <Darren.Dragovich@westernunion.com>

January 15, 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**  
**The Western Union Company (WU)**  
**Special Meeting**  
**John Chevedden**

Ladies and Gentlemen:

This is in regard to the January 4, 2018 no-action request.

The company modus operandi could put a proponent at a disadvantage. According to the company letter the company potentially has 90-days to decide how to respond to the rule 14a-8 proposal that was submitted to the company on November 24, 2018.

According to the company it can keep secret the details of its “under certain circumstances” limitations until February 24, 2018. Then the proponent could potentially have 24-hours to respond to the company revelation of the details of its “under certain circumstances” limitations.

Plus the company in secrecy does not even commit in its January 4, 2018 letter to making a meaningful change sometime in February consistent with the focus of the proposal.

For instance the final company outcome could be trivial or negative – like enabling 10% of the Company’s capital stock to call a special meeting if the supporting stock is held for a continuous 5-years.

Such secrecy could mask a novelty that might take a while to marshal an effective rebuttal to.

Plus there is strong shareholder support for improving the governance of the company. A shareholder proposals for written consent won 51% support at the company 2017 annual meeting.

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: Darren A. Dragovich <Darren.Dragovich@westernunion.com>

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January 12, 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**  
**The Western Union Company (WU)**  
**Special Meeting**  
**John Chevedden**

Ladies and Gentlemen:

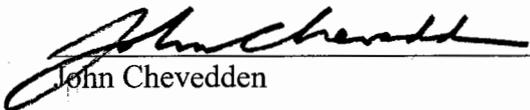
This is in regard to the January 4, 2018 no-action request.

The company modus operandi could put a proponent at a disadvantage. According to the company letter the company potentially has 90-days to decide how to respond to the rule 14a-8 proposal that was submitted to the company on November 24, 2018.

According to the company it can keep secret the details of its “under certain circumstances” limitations until February 24, 2018. Then the proponent could potentially have 24-hours to respond to the company revelation of the details of its “under certain circumstances” limitations.

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: Darren A. Dragovich <Darren.Dragovich@westernunion.com>

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January 8, 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**  
**The Western Union Company (WU)**  
**Special Meeting**  
**John Chevedden**

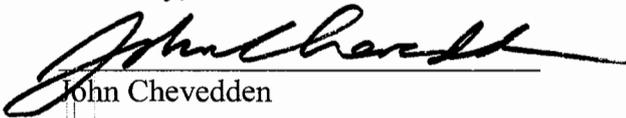
Ladies and Gentlemen:

This is in regard to the January 4, 2018 no-action request.

The company no action request is worthless unless it discloses the "certain circumstances." The "certain circumstances" could decapitate the anticipated action.

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: Darren A. Dragovich <Darren.Dragovich@westernunion.com>

because the Board, during its February 2018 meeting, is expected to approve the inclusion of the Company Proposal that recommends stockholders approve amendments to the Charter and Bylaws to allow stockholders holding at least 10% of the Company's common stock to call a special meeting of stockholders, under certain circumstances.

[WU – Rule 14a-8 Proposal, November 24, 2017]11-30

[This line and any line above it is not for publication.]

**Proposal [4] –Special Shareholder Meeting Improvement**

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

A shareholder right to call a special meeting and to act by written consent and are 2 complimentary ways (written consent completely lacking at Western Union) to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle such as the election of directors. More than 100 Fortune 500 companies provide for shareholders to call special meetings and to act by written consent

Scores of Fortune 500 companies allow 10% of shares to call a special meeting compared to Western Union's higher requirement. Western Union shareholders do not have the full right to call a special meeting that is available under state law.

This proposal is of increased importance because we do not have the right to act by written consent. Written consent won 51% support at the Western Union 2017 annual meeting. This 51%-support would have been higher (possibility 55%) if small shareholders had the same access to corporate governance information as large shareholders.

Please vote to improve management accountability to shareholders:

**Special Shareholder Meeting Improvement – Proposal [4]**

[The line above is for publication.]



1934 Act/Rule 14a-8

January 4, 2018

*Via Electronic Mail*

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

Re: The Western Union Company – Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

This letter is submitted by The Western Union Company, a Delaware corporation (the “Company”), pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). On November 24, 2017, the Company received a letter of the same date, from John Chevedden (the “Proponent”). Included with this letter was a proposal (the “Proposal”) intended for inclusion in the Company’s proxy materials (the “2018 Proxy Materials”) for the 2018 Annual Meeting of Stockholders (the “Annual Meeting”).

For the reasons stated below, the Company believes that it may, consistent with Rule 14a-8 under the Exchange Act (“Rule 14a-8”), exclude the Proposal from the 2018 Proxy Materials. We hereby request confirmation that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2018 Proxy Materials.

The Company intends to file its definitive proxy materials for the Annual Meeting on or about April 4, 2018. In accordance with Staff Legal Bulletin 14D, this letter and its exhibits are being submitted via email to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). We have also sent copies of this correspondence to the Proponent. Rule 14a-8(k) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

## **THE PROPOSAL**

The Proposal presents the following resolution:

Resolved, [s]hareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.

A copy of the Proposal, the statement in support thereof and related correspondence with the Proponent is attached to this letter as Exhibit A.

## **BASIS FOR EXCLUSION**

The Company respectfully requests that the Staff concur in its view that the Proposal may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) as substantially implemented because the Board of Directors of the Company (the "Board") is expected to take action to the fullest extent allowed by applicable law and the Company's governing documents to implement the essential objectives of the Proposal. The Company currently expects that its Board, during its February 2018 meeting, will approve the inclusion of a proposal in its 2018 Proxy Materials recommending that stockholders approve amendments to the Company's Amended and Restated Certificate of Incorporation (the "Charter"), a current copy of which is attached hereto as Exhibit B, and By-laws (the "Bylaws"), a current copy of which is attached hereto as Exhibit C, to allow a special meeting of stockholders to be called upon the request of one or more stockholders of record of the Company holding 10% or more of the Company's capital stock, under certain circumstances (the "Company Proposal"). The Company's Charter and Bylaws currently include a 20% threshold for stockholders to call a special meeting. Because the Board lacks unilateral authority to amend the Charter under Delaware law, submission of the Company Proposal for a vote by the stockholders will fully implement the Proposal to the greatest extent allowed by applicable law and the Company's governing documents, thereby rendering the Proposal excludable as substantially implemented.

## **ANALYSIS**

### **The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal.**

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented such proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." See Release No. 20091 (Aug. 16, 1983) and Release No. 12598 (Sept. 7, 1976).

The Staff has routinely permitted exclusion under Rule 14a-8(i)(10) where a company has satisfied the essential objectives of the proposal, rendering the proposal excludable as moot, even if the company (i) did not implement the proposal in every detail or (ii) exercised discretion in determining how to implement the proposal. *See, e.g., Windstream Holdings, Inc.* (Feb. 14, 2017); *Windstream Holdings, Inc.* (Feb. 16, 2016); *MetLife, Inc.* (Feb. 4, 2015); *Visa Inc.* (Nov. 14, 2014); *McKesson Corp.* (Apr. 8, 2011); *Exelon Corp.* (Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (Jan. 17, 2007); *ConAgra Foods, Inc.* (July 3, 2006); and *Johnson & Johnson* (Feb. 17, 2006). In each of these cases, the Staff concurred with the company's determination that the proposal was substantially implemented in accordance with Rule 14a-8(i)(10) where the company had taken actions or had policies and procedures in place relating to the subject matter of the proposal, or the company had otherwise taken actions to address the underlying concerns of the proposal and implemented its essential objective. Determination that the company has substantially implemented the proposal depends upon whether particular policies, practices and procedures compare favorably with the guidelines of the proposal.<sup>1</sup>

*B. The Board is Expected to Approve the Company Proposal, Thereby Substantially Implementing the Proposal*

Section 211 of the Delaware General Corporation Law (the “DGCL”) provides that a special meeting of stockholders of a Delaware corporation may be called by those authorized by the corporation's certificate of incorporation or bylaws or by its board of directors. The Charter, in Article Seventh, Section B, and Bylaws, in Article II, Section 3(b), currently allow a special meeting of stockholders to be called upon the request of one or more stockholders of record holding 20% or more of the Company's capital stock, under certain circumstances. Pursuant to Section 242 of the DGCL, the Board lacks unilateral authority to amend the Charter because such an amendment requires stockholder approval. Accordingly, the steps necessary under Delaware law to implement the Proposal include the Board's approval and submission to stockholders for a vote on an amendment to the Charter that gives “holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting.”

The Company believes that the Proposal may be properly excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Board, during its February 2018 meeting, is expected to approve the inclusion of the Company Proposal that recommends stockholders approve amendments to the Charter and Bylaws to allow stockholders holding at least 10% of the Company's common stock to call a special meeting of stockholders, under certain circumstances. By approving the applicable amendments to the Charter and Bylaws and submitting the Company Proposal for approval by the Company's stockholders, the Board is taking all steps permitted by applicable law to fully implement the Proposal and no further action on its part is needed to fully implement the Proposal.

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<sup>1</sup> *Texaco, Inc.*, (Mar. 28, 1991) (proposal requesting the company to implement a specific set of environmental guidelines was excluded as substantially implemented because the company had established a compliance and disclosure program related to its environmental program, even though the company's guidelines did not satisfy the specific inspection, public disclosure or substantive commitments that the proposal sought).

Although the Company Proposal has not yet been approved by the Board, the Staff has previously permitted companies to exclude similar proposals in reliance on Rule 14a-8(i)(10) where the company represents to the Staff that its board of directors is expected to take action that would substantially implement the proposal.<sup>2</sup> As in these other cases, the Board is expected to take action to the fullest extent allowed by the Company's Charter and Delaware law to implement the essential objectives of the Proposal by approving, during its February 2018 meeting, the inclusion of the Company Proposal in the 2018 Proxy Materials. The Company Proposal directly addresses and satisfies the requirements of the Proposal. For this reason, the Company believes it may properly omit the Proposal from the 2018 Proxy Materials.

### C. *Supplemental Notification Following Board Action*

The Company submits this no-action request at this time to address the timing requirements of Rule 14a-8(j). The Company will supplementally notify the Staff after the Board formally approves the inclusion of the Company Proposal in the 2018 Proxy Materials. The Staff has consistently granted no-action relief under Rule 14a-8(i)(10) where a company has notified the Staff that it expects that its board of directors will take 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., Windstream Holdings, Inc.* (Feb. 14, 2017); *Windstream Holdings, Inc.* (Mar. 5, 2015); *Visa Inc.* (Nov. 14, 2014); *Hewlett-Packard Co.* (Dec. 19, 2013); *Hewlett-Packard Co.* (Dec. 18, 2013); *Starbucks Corp.* (Nov. 27, 2012); *DIRECTV* (Feb. 22, 2011); *General Dynamics Corp.* (Feb. 6, 2009) (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).

## CONCLUSION

In accordance with Rule 14a-8, for the reasons stated above, the Company requests your concurrence that the entire Proposal may be excluded from the 2018 Proxy Materials. If you have any questions regarding this request or desire additional information, please contact me at 720-332-5711.

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<sup>2</sup> *See, e.g., Windstream Holdings, Inc.* (Mar. 5, 2015) (proposal seeking amendment to the company's bylaws and other appropriate governing document to give holders of 20% of the company's outstanding stock the power to call a special meeting of stockholders was excludable where the company's board of directors was expected to adopt implementing charter and bylaw amendments); *General Dynamics Corp.* (Feb. 6, 2009) (proposal seeking amendment of the company's bylaws and each appropriate governing document to give holders of 10% of the company's outstanding stock the power to call a special meeting of stockholders was excludable where the company's board of directors was expected to adopt implementing bylaw amendment); *3M Company* (Feb. 27, 2008) and *Johnson & Johnson* (Feb. 19, 2008) (proposals to seeking amendment to the companies' bylaws and any other appropriate governing documents to give holders of a reasonable percentage of the companies' outstanding stock the power to call a special meeting of stockholders were excludable where the company's board of directors was expected to adopt implementing bylaw amendments); *Hewlett-Packard Co.* (Dec. 11, 2007) (proposal seeking amendment of the company's charter and bylaws give holders of 25% or less of the company's outstanding stock the power to call a special meeting of stockholders was excludable where the company's board of directors was expected to adopt implementing bylaw amendment).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Darren A. Dragovich". The signature is fluid and cursive, with the first name "Darren" being the most prominent.

Darren A. Dragovich  
Vice President and Associate General Counsel

cc: John Chevedden

**Exhibit A  
Proposal**

JOHN CHEVEDDEN

\*\*\*  
Mr. John R. Dye  
Corporate Secretary  
The Western Union Company (WU)  
12500 E Belford Ave.  
Englewood, CO 80112  
PH: 720-332-3361  
PH: 866-405-5012  
FX: 720-332-4753  
FX: 720-332-3840

Dear Mr. Dye,

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

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

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

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

Sincerely,

  
John Chevedden

  
Date

cc: Stephanie Berberich <Stephanie.Berberich@westernunion.com>  
Matthew Senko <Matthew.Senko@westernunion.com>  
Darren A. Dragovich <Darrcn.Dragovich@westernunion.com>

[WU – Rule 14a-8 Proposal, November 24, 2017]11-30

[This line and any line above it is not for publication.]

**Proposal [4] –Special Shareholder Meeting Improvement**

Resolved, Shareowners ask our board to take the steps necessary (unilaterally if possible) to amend our bylaws and each appropriate governing document to give holders in the aggregate of 10% of our outstanding common stock the power to call a special shareowner meeting (or the closest percentage to 10% according to state law). This proposal does not impact our board's current power to call a special meeting.

Special meetings allow shareowners to vote on important matters, such as electing new directors that can arise between annual meetings. This proposal topic won more than 70%-support at Edwards Lifesciences and SunEdison in 2013.

A shareholder right to call a special meeting and to act by written consent and are 2 complimentary ways (written consent completely lacking at Western Union) to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle such as the election of directors. More than 100 Fortune 500 companies provide for shareholders to call special meetings and to act by written consent

Scores of Fortune 500 companies allow 10% of shares to call a special meeting compared to Western Union's higher requirement. Western Union shareholders do not have the full right to call a special meeting that is available under state law.

This proposal is of increased importance because we do not have the right to act by written consent. Written consent won 51% support at the Western Union 2017 annual meeting. This 51%-support would have been higher (possibility 55%) if small shareholders had the same access to corporate governance information as large shareholders.

Please vote to improve management accountability to shareholders:

**Special Shareholder Meeting Improvement – Proposal [4]**

[The line above 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 [\*\*\* ].

## Stephanie N Berberich

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**From:** Stephanie N Berberich  
**Sent:** Thursday, November 30, 2017 10:26 AM  
**To:** \*\*\*  
**Cc:** Matthew Senko; Darren Dragovich  
**Subject:** Request for Proof of Ownership (WU)  
**Attachments:** Chevedden Deficiency Letter (with Exhibits).pdf

Dear Mr. Chevedden,

We are in receipt of your stockholder proposal dated November 24, 2017. Please find attached a request for proof of ownership of Western Union stock. We would greatly appreciate confirmation of your receipt of this email.

Kind regards,

Stephanie

**Stephanie Berberich**  
Counsel, Corporate Governance, Securities and M&A  
(o) +1-720-332-1613  
(m) +1-303-330-2726

This e-mail is sent by the General Counsel's Office of The Western Union Company and may contain information that is privileged and/or confidential. If you are not the intended recipient, please delete this e-mail and any attachments and notify me immediately by either return mail, e-mail, or by telephone at (720) 332-1613.

**From:** \*\*\*  
**Sent:** Thursday, November 30, 2017 7:28 AM  
**To:** John R. Dye <John.Dye@westernunion.com>  
**Cc:** Stephanie N Berberich <Stephanie.Berberich@westernunion.com>; Matthew Senko <Matthew.Senko@westernunion.com>; Darren Dragovich <Darren.Dragovich@westernunion.com>  
**Subject:** Rule 14a-8 Proposal (WU)''

Mr. Dye,

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



November 30, 2017

VIA EMAIL AND FEDERAL EXPRESS

Mr. John Chevedden

\*\*\*

Re: Stockholder Proposal for the 2018 Annual Meeting

Dear Mr. Chevedden:

On November 24, 2017, The Western Union Company (the "Company") received by email your letter dated November 24, 2017. Included with the letter was a proposal (the "Proposal"), submitted by you and intended for inclusion in the Company's proxy materials (the "2018 Proxy Materials") for its 2018 Annual Meeting of Stockholders (the "2018 Annual Meeting").

As you may know, Rule 14a-8 under the Securities Exchange Act of 1934 ("Rule 14a-8") sets forth the legal framework pursuant to which a shareholder may submit a proposal for inclusion in a public company's proxy statement. Rule 14a-8(b) establishes that, in order to be eligible to submit a proposal, a shareholder "must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year" by the date on which the proposal is submitted. In addition, under Rule 14a-8(b), you must also provide a written statement that you intend to continue to own the required amount of securities through the date of the 2018 Annual Meeting.

Based on a review of our records, we have been unable to conclude that you meet the minimum ownership requirements under Rule 14a-8. Under Rule 14a-8(b), you must therefore prove your eligibility to submit a proposal in one of two ways: (1) by submitting to the Company a written statement from the "record" holder of your stock (usually a broker or bank) verifying that you have continuously held the requisite number of securities entitled to be voted on the Proposal for at least the one-year period prior to and including November 24, 2017, which is the date you submitted the Proposal, along with a written statement from you that you intend to continue ownership of the securities through the date of the 2018 Annual Meeting; or (2) by submitting to the Company a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 filed by you with the Securities and Exchange Commission (the "SEC") that demonstrates your ownership of the requisite number of securities as of or before the date on which the one-year eligibility period begins, along with a written statement from you that: (i) you have continuously owned such securities for the one-year period as of the date of the statement and (ii) you intend to continue ownership of the securities through the date of the 2018 Annual Meeting.

With respect to the first method of proving eligibility to submit a proposal as described in the preceding paragraph, please note that most large brokers and banks acting as "record" holders deposit the securities of their customers with the Depository Trust Company ("DTIC"). The staff of the SEC's Division of Corporation Finance (the "Staff") in 2011 issued further guidance on its view of what

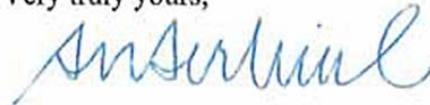
types of brokers and banks should be considered “record” holders under Rule 14a-8(b). In *Staff Legal Bulletin No. 14F* (October 18, 2011) (“SLB 14F”), the Staff stated, “[W]e will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as ‘record’ holders of securities that are deposited at DTC.” In 2012, the Staff clarified, as stated in *Staff Legal Bulletin No. 14G* (“SLB 14G”), that a written statement establishing proof of ownership may also come from an affiliate of a DTC participant.

You can confirm whether your broker or bank is a DTC participant or affiliate thereof by checking the DTC participant list, which is available on the DTC’s website (currently, at <http://dtec.com/~media/Files/Downloads/client-center/DTC/numerical.ashx>). If your broker or bank is a DTC participant or an affiliate of a DTC participant, then you will need to submit a written statement from your broker or bank verifying that, as of the date the Proposal was submitted, you continuously held the requisite amount of securities for at least one year. If your broker or bank is not on the DTC participant list or is not an affiliate of a broker or bank on the DTC participant list, you will need to ask your broker or bank to identify the DTC participant through which your securities are held and have that DTC participant provide the verification detailed above. You may also be able to identify this DTC participant or affiliate from your account statements because the clearing broker listed on your statement will generally be a DTC participant. If the DTC participant or affiliate knows the broker’s holdings but does not know your holdings, you can satisfy the requirements of Rule 14a-8 by submitting two proof of ownership statements verifying that, at the time your Proposal was submitted, the required amount of securities was continuously held for at least one year: (i) one statement from your broker confirming your ownership and (ii) one statement from the DTC participant confirming the broker’s ownership.

You have not yet submitted evidence establishing that you satisfy the eligibility requirements set forth in Rule 14a-8(b). Please note that if you intend to submit such evidence, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter. For your reference, copies of Rule 14a-8, SLB 14F and SLB 14G are attached to this letter as Exhibit A, Exhibit B and Exhibit C, respectively.

If you have any questions concerning the above, please do not hesitate to contact the undersigned by phone at (720) 332-1613 or by email at [stephanie.berberich@westernunion.com](mailto:stephanie.berberich@westernunion.com).

Very truly yours,



Stephanie Berberich  
Counsel and Assistant Secretary

Attachments

## Exhibit A

### Rule 14a-8

#### Title 17: Commodity and Securities Exchanges

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

#### § 240.14a-8 Shareholder proposals.

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

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

(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

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

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You

must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

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

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

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

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

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

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

(e) Question 5: What is the deadline for submitting a proposal?

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

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

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

(f) Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

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

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

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

(h)o Question 8: Must I appear personally at the shareholders' meeting to present the proposal?o

(1)o Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.o

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

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

(i)o Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?o

(1)o Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;o

## Stephanie N Berberich

---

**From:** Stephanie N Berberich  
**Sent:** Thursday, November 30, 2017 10:40 AM  
**To:** \*\*\*  
**Cc:** Matthew Senko; Darren Dragovich  
**Subject:** RE: Rule 14a-8 Proposal (WU) blb

Dear Mr. Chevedden,

We are in receipt of your proof of ownership of Western Union stock. We will revert if we have any questions or concerns.

Kind regards,

Stephanie

Stephanie Berberich  
Counsel, Corporate Governance, Securities and M&A  
(o) +1-720-332-1613  
(m) +1-303-330-2726

This e-mail is sent by the General Counsel's Office of The Western Union Company and may contain information that is privileged and/or confidential. If you are not the intended recipient, please delete this e-mail and any attachments and notify me immediately by either return mail, e-mail, or by telephone at (720) 332-1613.

—Original Message—

**From:** \*\*\*  
**Sent:** Thursday, November 30, 2017 10:30 AM  
**To:** Stephanie N Berberich <Stephanie.Berberich@westernunion.com>  
**Cc:** Matthew Senko <Matthew.Senko@westernunion.com>; Darren Dragovich <Darren.Dragovich@westernunion.com>  
**Subject:** Rule 14a-8 Proposal (WU) blb

Dear Ms. Berberich,  
Please see the attached broker letter.  
Sincerely,  
John Chevedden



**Ameritrade**

11/29/2017

John Chevedden  
\*\*\*

Re: Your TD Ameritrade Account Ending in\*\*\* in TD Ameritrade Clearing Inc DTC #0188

Dear John Chevedden,

Thank you for allowing me to assist you today. As you requested, this letter confirms that, as of the date of this letter, you have continuously held no less than the below number of shares in the above referenced account since October 1, 2016.

Danaher Corporation (DHR) - 100 shares  
Allergan Plc (AGN) - 50 shares  
The Western Union Company (WU) - 200 shares  
Kohl's Corporation (KSS) - 100 shares  
Union Pacific Corporation (UNP) - 50 shares

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

Sincerely,

Andrew P. Haag  
Resource Specialist  
TD Ameritrade

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

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

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200 S. 15th Ave,  
Omaha, NE 68154

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

**Exhibit B**  
**Amended and Restated Certificate of Incorporation**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
THE WESTERN UNION COMPANY**

The Western Union Company, a Delaware corporation, the original Certificate of Incorporation of which was filed with the Secretary of State of the State of Delaware on February 17, 2006, HEREBY CERTIFIES that this Amended and Restated Certificate of Incorporation restating, integrating and amending its Certificate of Incorporation was duly proposed by its Board of Directors and adopted by its stockholders in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "GCL").

**FIRST:** The name of the Corporation is: The Western Union Company (the "Corporation").

**SECOND:** The registered office of the Corporation is located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, in the State of Delaware, with the zip code of 19801. The name of its registered agent at such address is The Corporation Trust Company.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware ("GCL") as set forth in Title 8 thereof.

**FOURTH:** The total number of shares of stock which the Corporation shall have authority to issue is 2,010,000,000, consisting of 2,000,000,000 shares of Common Stock, each having a par value of \$.01, and 10,000,000 shares of Preferred Stock, each having a par value of \$1.00 per share.

The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series and as may be permitted by the GCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same or any other class or classes of stock, at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

**FIFTH: A.** The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors consisting of not less than one nor more than fifteen directors, the exact number of directors to be determined from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. At each annual meeting of stockholders beginning in 2013, directors shall be elected annually for one-year terms expiring at the next succeeding annual meeting of stockholders. Notwithstanding the foregoing, the Class I directors elected at the 2010 annual meeting of stockholders shall continue to serve until the 2013 annual meeting of stockholders, the Class II directors elected at the 2011 annual meeting of stockholders shall continue to serve until the 2014 annual meeting of stockholders and the Class III directors elected at the 2012 annual meeting of stockholders shall continue to serve until the 2015 annual meeting of stockholders, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Beginning with the 2015 annual meeting of stockholders, the entire Board of Directors shall be subject to election at each annual meeting of stockholders and the Board of Directors will no longer be divided into classes. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Any vacancy on the Board of Directors, including due to newly created directorships resulting from any increase in the authorized number of directors, may be filled only by a majority of the directors then in office, even if less than a quorum, or a sole remaining director.

Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his predecessor.

**B.** Prior to and until the time at which the Board of Directors ceases to be classified pursuant to Article FIFTH, Section A, of this Certificate of Incorporation, a director may be removed only by the holders of a majority of shares then entitled to vote at an election of directors and only for cause. From and after that time at which the Board of Directors ceases to be classified pursuant to Article FIFTH, Section A, any director may be removed with or without cause, provided that a director may be removed only by the holders of a majority of shares then entitled to vote at an election of directors.

**SIXTH: A.** A director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by Delaware law.

**B.(i)** Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director of the Corporation shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law. The right to indemnification conferred in this Article SIXTH shall also include the right to be paid by the Corporation the expenses incurred in connection with any such proceeding in advance of its final disposition to the fullest extent authorized by Delaware law. The right to indemnification conferred in this Article SIXTH shall be a contract right.

**(ii)** The Corporation may, by action of its Board of Directors, provide indemnification to such of the officers, employees and agents of the Corporation to such extent and to such effect as the Board of Directors shall determine to be appropriate and authorized by Delaware law.

**C.** The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware law.

**D.** The rights and authority conferred in this Article SIXTH shall not be exclusive of any other right which any person may otherwise have or hereafter acquire.

**E.** Neither the amendment nor repeal of this Article SIXTH, nor the adoption of any provision of this Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware law, any modification of law, shall eliminate or reduce the effect of this Article SIXTH in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

**SEVENTH: A.** Any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of such holders and may not be effected by a consent in writing by such holders in lieu of such a meeting.

**B.** Unless otherwise prescribed by law or by this Certificate of Incorporation (including any Certificates of Designation with respect to any Preferred Stock, the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called only by the officers and directors or holders of record of at least 20% aggregate of the outstanding capital stock of the Corporation, subject to the procedures and other requirements as provided in the By-Laws of the Corporation.

**C.** Notwithstanding anything in this Certificate of Incorporation to the contrary and in addition to any vote of the Board of Directors required by this Certificate of Incorporation, the affirmative vote of the holders of a majority of the outstanding capital stock entitled to vote thereon shall be required to alter, amend or repeal, or adopt any provision inconsistent with, any provision of this Article SEVENTH.

**EIGHTH:** The By-Laws of the Corporation may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of stockholders or Board of Directors as the case may be. All such amendments must be approved by either the affirmative vote of the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the Board of Directors then in office.

**IN WITNESS WHEREOF**, The Western Union Company has caused this Certificate to be signed on this 30th day of May 2013 in its name and attested by duly authorized officers.

**THE WESTERN UNION COMPANY**

By: /s/ John R. Dye  
Name: John R. Dye  
Title: Executive Vice President  
General Counsel and Secretary

*Signature Page to Amended & Restated Certificate of Incorporation*

**Exhibit C**  
**By-Laws**

As approved by the Board of Directors  
as of February 19, 2016

BY-LAWS OF  
THE WESTERN UNION COMPANY  
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation also may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

Section 2. Annual Meetings. The Annual Meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect Directors, and transact such other business as may properly be brought before the meeting. Written notice or, to the extent permitted by law, electronic notice of the Annual Meeting stating the place, date and hour of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. (a) Unless otherwise prescribed by law or by the Certificate of Incorporation (including any Certificates of Designation with respect to any Preferred Stock, the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by: (i) the Chairman of the Board of Directors; (ii) the Chief Executive Officer; (iii) the President, if there be one; (iv) the Secretary; (v) the Chairman of the Governance Committee; or (vi) any such officer at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting.

(b) Subject to this Section 3(b) and other applicable provisions of these By-laws, a Special Meeting of Stockholders shall be called by the Secretary upon the written request (each such request, a "Special Meeting Request" and such meeting, a "Stockholder Requested Special Meeting") of one or more stockholders of record of the Corporation that together have continuously held, for their own account or on behalf of others, beneficial ownership of at least a twenty percent (20%) aggregate "net long position" of the capital stock issued and outstanding (the "Requisite Percentage") for at least one year prior to the date such request is delivered to the Corporation (such period, the "One-Year Period"). For purposes of determining the Requisite Percentage, "net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"); *provided that* (x) for purposes of such definition, (A) "the date that a tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request, (B) the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of capital stock on the New York Stock Exchange (or any successor thereto) on such date (or, if such date is not a trading day, the next succeeding trading day), (C) the "person whose securities are the subject of the offer" shall refer to the Corporation, and (D) a "subject security" shall refer to the outstanding capital stock; and (y) the net long position of such holder shall be reduced by the number of shares of capital stock as to which such holder does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such holder has, at any time during the One-Year Period, entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting holders have complied with the requirements of this Section 3(b) and related provisions of these By-laws shall be

determined in good faith by the Board of Directors or its designees, which determination shall be conclusive and binding on the Corporation and the stockholders.

(c) In order for a Stockholder Requested Special Meeting to be called, one or more Special Meeting Requests must be signed by the Requisite Percentage of stockholders submitting such request and by each of the beneficial owners, if any, on whose behalf the Special Meeting Request is being made and must be delivered to the Secretary. The Special Meeting Request(s) shall be delivered to the Secretary at the principal executive offices of the Corporation by nationally recognized private overnight courier service, return receipt requested. Each Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the Stockholder Requested Special Meeting and the matters proposed to be acted on at it, (ii) bear the date of signature of each such stockholder signing the Special Meeting Request, (iii) set forth (A) the name and address, as they appear in the Corporation's books, of each stockholder signing such request and the beneficial owners, if any, on whose behalf such request is made and (B) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the Exchange Act) by each such stockholder and the beneficial owners, if any, on whose behalf such request is made, (iv) set forth any material interest of each stockholder signing the Special Meeting Request in the business desired to be brought before the Stockholder Requested Special Meeting, (v) include documentary evidence that the stockholders requesting the special meeting own the Requisite Percentage as of the date on which the Special Meeting Request is delivered to the Secretary of the Corporation; *provided, however*, that if the stockholders are not the beneficial owners of the shares constituting all or part of the Requisite Percentage, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary of the Corporation within ten (10) days after the date on which the Special Meeting Request is delivered to the Secretary of the Corporation) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own such shares as of the date on which such Special Meeting Request is delivered to the Secretary, (vi) an agreement by each of the stockholders requesting the special meeting and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made to notify the Corporation promptly in the event of any decrease in the net long position held by such stockholder or beneficial owner following the delivery of such Special Meeting Request and prior to the Stockholder Requested Special Meeting and an acknowledgement that any such decrease shall be deemed to be a revocation of such Special Meeting Request by such stockholder or beneficial owner to the extent of such reduction, (vii) contain any other information that would be required to be provided by a stockholder seeking to bring an item of business before an annual meeting of stockholders pursuant to Article II, Section 9 of these By-laws, and, (viii) if the purpose of the Stockholder Requested Special Meeting includes the election of one or more Directors, contain any other information that would be required to be set forth with respect to a proposed nominee pursuant to Article II, Section 8 of these By-laws. Each Stockholder making a Special Meeting Request and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made is required to update such Special Meeting Request delivered pursuant to this Section 3 in accordance with the requirements of Article II, Sections 8 and 9 of these By-laws. Any requesting Stockholder may revoke his, her or its Special Meeting Request at any time prior to the Stockholders Requested Special Meeting by written revocation delivered to the Secretary of the Corporation at the principal executive offices of the Corporation. If at any time after sixty (60) days following the earliest dated Special Meeting Request, the unrevoked (whether by specific written revocation or by a reduction in the net long position held by such Stockholder, as described above) valid Special Meeting Requests represent in the aggregate less than the Requisite Percentage, there shall be no requirement to hold a Stockholder Requested Special Meeting.

(d) In determining whether Special Meeting Requests have met the requirements of this Section 3, multiple Special Meeting Requests will be considered together only if (i) each Special Meeting Request identifies substantially the same purpose or purposes of the requested special meeting and substantially the same matters proposed to be acted on at the Stockholder Requested Special Meeting (in each case as determined in good faith by the Board), and (ii) such Special Meeting Requests have been delivered to the Secretary within 60 days of the delivery to the Secretary of the earliest dated Special Meeting Request relating to such item(s) of business.

(e) If none of the stockholders who submitted a Special Meeting Request appears or sends a qualified representative to present the item of business submitted by the stockholders for consideration at the Stockholder Requested Special Meeting, such item of business shall not be submitted for vote of the stockholders at such Stockholder Requested Special Meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation or such stockholder(s).

(f) Except as provided in the next sentence, a Stockholder Requested Special Meeting shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; *provided, however*, that the date of any such Stockholder Requested Special Meeting shall be not more than ninety (90) days after the date on which valid Special Meeting Request(s) constituting the Requisite Percent are delivered to the Secretary of the Corporation (such date of delivery being the "Delivery Date"). Notwithstanding the foregoing, the Secretary of the Corporation shall not be required to call a Stockholder Requested Special Meeting if (i) the Board of Directors calls an annual meeting of stockholders, or a special meeting of stockholders at which a Similar Item (as defined in this Section 3(f)) is to be presented pursuant to the notice of such meeting, in either case to be held not later than sixty (60) days after the Delivery Date; (ii) the Delivery Date is during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the earlier of (A) the date of the next annual meeting and (B) thirty (30) days after the first anniversary of the date of the immediately preceding annual meeting; or (iii) the Special Meeting Request(s) (A) contain an identical or substantially similar item (as determined in good

faith by the Board of Directors, a "Similar Item") to an item that was presented at any meeting of stockholders held not more than one hundred and twenty (120) days before the Delivery Date (and, for purposes of this clause (iii) the election of directors shall be deemed a "Similar Item" with respect to all items of business involving the election or removal of directors); (B) relate to an item of business that is not a proper subject for action by the stockholders under applicable law; (C) were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law or would cause the Corporation to violate any law; or (D) do not comply with the provisions of this Section 3. The procedures set forth in this Section 3 are the exclusive means by which items of business may be raised by stockholders at a Stockholder Requested Special Meeting.

(g) Written notice of a special meeting stating the place, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. Any notice relating to a special meeting appropriately called pursuant to this Section 3 shall describe the item or items of business to be considered at such special meeting. Business transacted at any special meeting shall be limited to the matters identified in the Corporation's notice given pursuant to this Section 3; provided, however, that nothing herein shall prohibit the Board of Directors from including in such notice and submitting to the Stockholders additional matters to be considered at any Stockholder Requested Special Meeting.

Section 4. Quorum. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, all voting shall be conducted in accordance with this Section 5. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote on the subject matter held by such stockholder or such other vote as set forth in the Certificate of Incorporation. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

In all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Each director shall be elected by the vote of a majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. However, if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. A majority of votes cast in an election of directors shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker nonvotes" not counted as a vote cast either "for" or "against" that director's election).

If a nominee for director, who is an incumbent director, is not elected, the director shall promptly tender his or her resignation to the Board of Directors. The Corporate Governance Committee, or such other committee designated by the Board of Directors, shall make a recommendation to the Board of Directors as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The Board of Directors shall act on the resignation, taking into account the committee's recommendation, and publicly disclose (by a press release, a filing with the Securities Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within 90 days following certification of the election results. The director who tenders his or her resignation shall not participate in the recommendation of the committee or the decision of the Board of Directors with respect to his or her resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected or his or her earlier resignation or removal.

If the Board of directors accepts a director's resignation pursuant to this Section 5, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board of Directors may fill the resulting vacancy pursuant to the provisions of Article III, Section 2 or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 1 of these By-Laws.

Section 6. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, the list shall also be open to the examination of any stockholder of the Corporation during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 7. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to vote in person or by proxy at any meeting of stockholders.

Section 8. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation of the Corporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances.

(a) Nominations of persons for election to the Board of Directors may be made by or at the direction of the Board of Directors (or any duly authorized committee thereof) at any annual meeting of stockholders or any special meeting of stockholders (but only if the election of directors is a matter specified in the notice of meeting).

(b) Nominations of persons for election to the Board of Directors may also be made at any annual or special (but only if the election of directors is a matter specified in the notice of meeting) meeting of stockholders by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 8(b) and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 8(b). A stockholder may also nominate persons for election to the Board of Directors pursuant to a Special Meeting Request in accordance with the requirements set forth in Article II, Section 3.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

For a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting pursuant to this Section 8(b), to be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs. If the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, to be timely, the stockholder's notice for nominations to be made at a special meeting must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the special meeting or, if later, the tenth day following the day on which public disclosure of the date of such special meeting was first made.

To be in proper written form, a stockholder's notice to the Secretary must set forth (a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder; and (b) as to the stockholder giving the notice (i) the name and record address of such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder or such beneficial owner, (iii) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder or beneficial owner with respect to any share of stock of the Corporation (which information shall be updated by such

stockholder and beneficial owner, if any, as of the record date of the meeting not later than 10 days after the record date for the meeting), (iv) a description of all arrangements or understandings between such stockholder or such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (v) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to nominate the persons named in its notice and (vi) any other information relating to such stockholder or such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

(c) The Corporation shall include in its proxy statement for an annual meeting of stockholders the name, together with the Required Information (as defined below), of any person nominated for election (the "Stockholder Nominee") to the Board of Directors by a stockholder that satisfies, or by a group of stockholders that satisfy, the requirements of this Section 8(c) (such individual or stockholder group, including each member thereof, to the extent the context so requires, the "Eligible Stockholder"), and who expressly elects at the time of providing the notice required by this Section 8(c) to have its nominee included in the Corporation's proxy statement pursuant to this Section 8(c). Any stockholder or group of stockholders seeking to nominate one or more Stockholder Nominees pursuant to this Section 8(c) shall provide the Corporation with the information called for by the final paragraph of Section 8(b) with respect to such Eligible Stockholder or group of stockholders and each such Stockholder Nominee, as applicable.

For purposes of this Section 8(c), the "Required Information" that the Corporation will include in its proxy statement is (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement by the regulations promulgated under the Exchange Act; and (ii) if the Eligible Stockholder so elects, a Statement (defined below).

The Corporation shall not be required to include, pursuant to this Section 8(c), any information concerning any Stockholder Nominee in its proxy statement for any meeting of stockholders (w) with respect to whom the Secretary of the Corporation receives a notice that a stockholder has nominated such person for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director set forth in Section 8(b), (x) who would cause the number of Stockholder Nominees included in the Corporation's proxy statement to exceed the maximum number permitted by this Section 8(c), (y) who is not independent under the listing standards of the principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (collectively, the "Independence Standards"), or (z) (A) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these By-laws, the Corporation's Amended and Restated Certificate of Incorporation, the rules and listing guidelines of the principal U.S. securities market in which the common stock of the Corporation trades or any other applicable state or federal law or regulation, (B) who has been an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, within the past three years, or (C) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years.

The Corporate Governance and Public Policy Committee shall determine if the Stockholder Nominee satisfies the Independence Standards based on the information regarding such independence of such Stockholder Nominee that is received by the Board of Directors. At the request of the Corporation, the Stockholder Nominee must complete and submit the questionnaires that are required of the Corporation's directors and officers. The Corporation may also request such additional information as is necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the Independence Standards. The Corporate Governance and Public Policy Committee may, in its sole discretion, permit the Eligible Stockholder and/or the Stockholder Nominee and its or their representatives an opportunity to appear before such committee in connection with its consideration as to whether the Stockholder Nominee satisfies the Independence Standards.

If a Stockholder Nominee or an Eligible Stockholder fails to continue to meet the requirements of this Section 8(c) or if the Eligible Stockholder fails to meet the all of the requirements of the notice provisions set forth in the last paragraph of Section 8(b) to properly nominate a candidate for election as a director at the annual meeting of stockholders or if a Stockholder Nominee dies, becomes disabled or is otherwise disqualified from being nominated for election or serving as a director prior to the annual meeting of stockholders:

(i) The Corporation may, to the extent feasible, remove the name of the Stockholder Nominee and the Statement from its proxy statement, remove the name of the Stockholder Nominee from its form of proxy and/or otherwise communicate to its stockholders that the Stockholder Nominee will not be eligible for nomination at the annual meeting of stockholders; and

(ii) The Eligible Stockholder may not name another Stockholder Nominee or, subsequent to the last day on which a stockholder's notice of an intent to make a nomination would be timely, otherwise cure in any way any defect preventing the nomination of the Stockholder Nominee at the annual meeting of stockholders.

The number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in the Corporation's proxy statement pursuant to this Section 8(c) but either are subsequently withdrawn or that the Board of Directors decides to nominate as Board of Director nominees) appearing in the Corporation's proxy statement with respect to an annual meeting of stockholders shall not exceed 20% of the number of directors in office as of the last day on which notice of a nomination in accordance with the procedures set forth in this Section 8(c) may be delivered pursuant to this Section 8(c), or if such amount is not a whole number, the closest whole number below 20%. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 8(c) exceeds this maximum number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy statement until the maximum number is reached, going in order of the amount (largest to smallest) of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned in the written notice of the nomination submitted to the Corporation. If the maximum number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

For purposes of this Section 8(c), an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors.

An Eligible Stockholder must have owned (as defined above) 3% or more of the Corporation's outstanding common stock continuously for at least three years (the "Required Shares") as of both the date the written notice of the nomination is delivered to or mailed and received by the Corporation in accordance with this Section 8(c) and the record date for determining stockholders entitled to vote at the annual meeting. Within the time period specified in this Section 8(c) for providing notice of a nomination in accordance with the procedures set forth in this Section 8(c), an Eligible Stockholder must provide the following information in writing to the Secretary of the Corporation: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven calendar days prior to the date the written notice of the nomination is delivered to or mailed and received by the Corporation, the Eligible Stockholder owns, and has owned continuously for the preceding three years, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date; (ii) information regarding the Stockholder Nominee and Eligible Stockholder that is the same as that which would be required to be set forth in the stockholder's notice of nomination of such Stockholder Nominee pursuant to Section 8(b), together with the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected; (iii) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act, as may be amended; (iv) a representation that the Eligible Stockholder (A) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (B) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 8(c), (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board of Directors, and (D) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and (v) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation and (B) comply with all other laws and regulations applicable to any solicitation in connection with the annual meeting.

The Eligible Stockholder may provide to the Secretary of the Corporation, at the time the information required by this Section

8(c) is provided, a written statement for inclusion in the Corporation's proxy statement for the annual meeting, not to exceed 250 words, in support of the Stockholder Nominee's candidacy (the "Statement"). Notwithstanding anything to the contrary contained in this Section 8(c), the Corporation may omit from its proxy statement any information or Statement that it, in good faith, believes would violate any applicable law or regulation or otherwise cause harm to the Corporation.

Within the time period specified in this Section 8(c) for providing notice of a nomination in accordance with the procedures set forth in this Section 8(c), a Stockholder Nominee must deliver to the Secretary of the Corporation a written representation and agreement that such person (i) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question that has not been disclosed to the Corporation, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and (iii) will comply with all the Corporation corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines, and any other the Corporation policies and guidelines applicable to directors. If the Stockholder Nominee fails to comply with any of the requirements included in this paragraph or this Section 8(c) the Stockholder Nominee will not be eligible for inclusion in the Corporation's proxy statement.

Any Stockholder Nominee who is included in the Corporation's proxy statement for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at such annual meeting, or (ii) does not receive at least 25% of the votes cast in favor of the Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 8(c) for the next two annual meetings.

Notwithstanding anything herein to the contrary, to be timely, a stockholder's notice of a nomination in accordance with the procedures set forth in this Section 8(c) must be delivered or mailed and received at the principal executive offices of the Corporation no later than 120 calendar days before the first anniversary of the date that the Corporation distributed its proxy statement to stockholders for the previous year's annual meeting of stockholders.

(d) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 8. If the Chairman of the annual meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

**Section 9. Business at Stockholder Meetings.** No business may be transacted at an annual meeting of stockholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 9 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 9. Except for proposals properly made in accordance with Rule 14a-8 under the Exchange Act, and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (c) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders (other than pursuant to a Special Meeting Request in accordance with the requirements set forth in Article II, Section 3), and the only matters that may be brought before a special meeting are the matters specified in the Corporation's notice of meeting. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Article II, Section 8 of these By-laws.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder or such beneficial owner, (iv) whether and the extent to which any

hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such stockholder or beneficial owner with respect to any share of stock of the Corporation (which information shall be updated by such stockholder and beneficial owner, if any, as of the record date of the meeting not later than 10 days after the record date for the meeting), (v) a description of all arrangements or understandings between such stockholder or such beneficial owner and any other person or persons (including their names) in connection with the proposal of such business by such stockholder and any material interest of such stockholder or such beneficial owner in such business and (vi) a representation that such stockholder or such beneficial owner intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 9, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 9 shall be deemed to preclude discussion by any stockholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

### ARTICLE III

#### DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall be fixed from time to time by resolution adopted by affirmative vote of a majority of the entire Board of Directors. Each director shall hold office until the next annual meeting of stockholders following his or her election and until his or her successor shall be elected and shall qualify, or until his or her earlier death, resignation, retirement, disqualification or removal from office. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders. As used in these By-Laws, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

Section 2. Vacancies. Any vacancy on the Board of Directors, including due to newly created directorships resulting from any increase in the authorized number of directors, may only be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual shareholders meeting that is at least 120 days after the appointment of such directors and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 3. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, the Controlling Officer or any directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, electronic mail or in person on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Actions of Board. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings and electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar

communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

**Section 8. Committees.** The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

**Section 9. Compensation.** The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

**Section 10. Chairman of the Board of Directors.** The Board of Directors shall elect from the directors a Chairman of the Board of Directors at the first meeting of the Board of Directors after each Annual Meeting of stockholders. The Chairman of the Board of Directors shall hold such office until his or her successor is chosen and qualified or until earlier resignation or removal from such position. The Chairman of the Board of Directors shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall perform such duties and may exercise such powers as from time to time may be assigned to the Chairman by these By-Laws or by the Board of Directors.

## ARTICLE IV

### OFFICERS

**Section 1. General.** The officers of the Corporation shall be chosen by the Board of Directors and there shall be a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chief Executive Officer, President and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor need such officers be directors of the Corporation.

**Section 2. Election.** The Board of Directors at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

**Section 3. Voting Securities Owned by the Corporation.** Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by any officer of the Corporation and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

**Section 4. Chief Executive Officer.** At the request of the Chairman of the Board of Directors, or in such person's absence, or in the event of such person's inability or refusal to act, the Chief Executive Officer, if not also the Chairman of the Board of Directors, and then the President, if there be one, shall perform the duties of the Chairman of the Board of Directors, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman of the Board of Directors. The Chief Executive Officer, or in such person's absence, or in the event of such person's inability or refusal to act, the President, if there be one (such person, the "Controlling Officer"), shall, subject to the control of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The Controlling Officer shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the Controlling Officer. In the absence or disability of the Chairman of the Board of Directors, the Controlling Officer

shall preside at all meetings of the stockholders and the Board of Directors. The Controlling Officer shall also perform such other duties and may exercise such other powers as from time to time may be assigned to such person by these By-Laws or by the Board of Directors.

Section 5. Controlling Officer Succession. At the request of the Controlling Officer, or in such person's absence, or in the event of such person's inability or refusal to act, or if there is no Controlling Officer, the officer designated by the Board of Directors shall perform the duties of the Controlling Officer and when so acting, shall have all the powers of and be subject to all the restrictions upon the Controlling Officer.

Section 6. Secretary. The Secretary, or an Assistant Secretary, shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary, or an Assistant Secretary, also shall perform like duties for the standing committees when required. The Secretary, or an Assistant Secretary, shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors, or the Controlling Officer under whose supervision the Secretary and Assistant Secretaries shall be. If the Secretary and all Assistant Secretaries are unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, then the Board of Directors, the Chairman of the Board of Directors or the Controlling Officer may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 7. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Controlling Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all such officer's transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 8. Assistant Secretaries. Except as may be otherwise provided in these By-Laws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, the Controlling Officer, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of such person's disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 9. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, Controlling Officer, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of such person's disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

Section 10. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## ARTICLE V

### STOCK

Section 1. Certificated and Uncertificated Shares. Shares of the Corporation's stock may be certificated or uncertificated, as provided under Delaware law. All certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. The certificates shall be signed by (i) the Chairman of the Board of Directors, the Chief Executive Officer, the President or a Vice President and (ii) the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, and certify the number of shares owned by such holder in the Corporation.

Section 2. Signatures. Any signature required to be on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the record holder of such stock, or by their attorney lawfully constituted in writing, and, in the case of stock represented by a certificate, upon the surrender of the certificate.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any such other corporate action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

## ARTICLE VI

### NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, facsimile, telex, cable, e-mail or electronic means.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director or member of a committee, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE VIII

### INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings other Than Those by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action, suit or proceeding by or in the right of the Corporation) by reason of the fact that the person is or was an Indemnitee against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had reasonable cause to believe the Indemnitee's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceedings by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that the person is or was Indemnitee against expenses (including attorneys' fees) actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceedings if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any action, suit or proceedings, nor any claim, issue or matter, as to which such Indemnitee shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action, suit or proceedings was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Indemnitee is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Prepayment of Expenses. Actual and reasonable expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil, criminal, administrative or investigative action, suit or proceeding as contemplated by Sections 1 or 2 of this Article VIII (other than an Excluded Matter) shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 4. Indemnity if Successful on the Merits. The Corporation shall indemnify any Indemnitee if such Indemnitee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, against expenses (including attorneys' fees) actually and reasonably

incurred by such Indemnitee in connection therewith.

**Section 5. Exercise of Powers.** Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in this Article VIII. Such determination shall be made with respect to a person who is an Indemnitee at the time of such determination (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (iv) by majority vote of the stockholders. The exercise of the power to indemnify and advance expenses by the Corporation pursuant to this Article VIII shall not be deemed to limit any other exercise or restriction of such powers by the Corporation, provided, that any repeal or modification of this Article VIII shall not adversely affect any right or protection of any Indemnitee in respect to any act or omission occurring prior to the time of such repeal or modification.

**Section 6. Indemnification by a Court.** Notwithstanding any contrary determination or absence of determination in a specific case under Section 5 of this Article VIII, any Indemnitee may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1, 2 and 4 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the Indemnitee is proper in the circumstances because such Indemnitee has met the applicable standards of conduct set forth in Section 1, 2 or 4 of this Article VIII, as the case may be. Neither a contrary determination nor the absence of a determination in a specific case under Section 5 of this Article VIII shall be a defense to such application or create a presumption that the Indemnitee seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 6 shall be given to the Corporation promptly upon the filing of such application.

**Section 7. Survival of Indemnification and Advancement of Expenses.** The indemnification and advancement of expenses provided by, or granted pursuant to this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an Indemnitee and shall inure to the benefit of the heirs, executors and administrators of such Indemnitee. No repeal, modification or amendment of, or adoption of any provision inconsistent with, this Article VIII, nor to the fullest extent permitted by applicable law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or with respect to, arising out of or related to any event, act or omission that occurred prior to, the time of such repeal, modification, amendment or adoption (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed.)

**Section 8. Applicable Law.** The rights granted under this Article VIII shall be limited to the extent any applicable laws limit such rights to indemnity or the power to indemnify.

**Section 9. Certain Definitions.** For purposes of this Article VIII the following definitions shall apply.

“Acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe their conduct was unlawful” shall include, but not be limited to, actions based on the following information from the Corporation or other corporation, partnership, joint venture, trust, employee benefit plan, or enterprise to which the Indemnitee is or was serving at the request of the Corporation (for purposes of this definition only, an “Enterprise”): records or books of account of the Corporation or Enterprise, information supplied by an officer of the Corporation or Enterprise in the course of their duties, advice of legal counsel for the Corporation or Enterprise, or information or records given or reports made to the Corporation or Enterprise by an independent certified public accountant, appraiser or other expert selected with reasonable care by the Corporation or Enterprise.

“Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers or employee so that any person who is or was a director, officer or employee of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provision of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

“Excluded Matter” means any action, suit or proceeding by the Corporation or one of its subsidiaries against any Indemnitee who is or was an employee, but not an officer, of the Corporation, or is or was serving at the request of the Corporation as an employee, but not as a director or officer, of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

“Fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan.

"Indemnitee" shall include any person who is or was an officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer or employee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

"Not opposed to the best interest of the corporation" shall include actions taken in good faith in service to an employee benefit plan that the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan.

Section 10. Indemnification of Directors. Directors of the Corporation shall be entitled to indemnification and advancement of expenses as provided in the Certificate of Incorporation.

## ARTICLE IX

### FORUM FOR CERTAIN ACTIONS

Section 1. Forum. Unless a majority of the Board of Directors, acting on behalf of the Corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim against the Corporation or any of its directors, officers or other employees arising pursuant to any provision of the General Corporation Law of the State of Delaware, the Corporation's Certificate of Incorporation or these By-Laws (in each case, as may be amended from time to time) or (d) any action asserting a claim against the Corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants; provided that this Section 1 of Article IX shall not apply with respect to any litigation that has been filed as of February 19, 2016.

Section 2. Personal Jurisdiction. If any action the subject matter of which is within the scope of the immediately preceding section is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (a) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the immediately preceding section (an "Enforcement Action") and (b) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Section 3. Enforceability. If any provision of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article IX, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.