



DIVISION OF  
CORPORATION FINANCE

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

March 8, 2019

Karen Dempsey  
Orrick, Herrington & Sutcliffe LLP  
kdempsey@orrick.com

Re: TheStreet, Inc.  
Incoming letter dated January 8, 2019

Dear Ms. Dempsey:

This letter is in response to correspondence dated January 8, 2019 concerning the shareholder proposal (the "Proposal") submitted to TheStreet, Inc. (the "Company") by Kenneth Steiner (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
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March 8, 2019

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

Re: TheStreet, Inc.  
Incoming letter dated January 8, 2019

The Proposal relates to simple majority voting.

There appears to be some basis for your view that the Company may exclude the Proposal from the proxy materials for its 2019 annual meeting under rule 14a-8(h)(3). We note your representation that the Company included the Proponent's proposal in its proxy statement for its 2017 annual meeting, but that neither the Proponent nor his representative appeared to present the proposal at this meeting. Moreover, the Proponent has not stated a "good cause" for the failure to appear. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from the proxy materials for its 2019 annual meeting in reliance on rule 14a-8(h)(3).

Sincerely,

Kasey L. Robinson  
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.



TheStreet, Inc.  
14 Wall Street, 15th Floor  
New York, NY 10005

January 8, 2019

VIA E-MAIL

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

Re: *TheStreet, Inc.*  
*Stockholder Proposal of Kenneth Steiner, with John Chevedden as Proxy*  
*Securities Exchange Act of 1934 – Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that TheStreet, Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders (collectively, the “2019 Proxy Materials”) a stockholder proposal (the “2019 Proposal”) and statement in support thereof received from Kenneth Steiner (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2019 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (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 2019 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.

## **BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the 2019 Proposal may be excluded from the 2019 Proxy Materials pursuant to Rule 14a-8(h)(3) because neither the Proponent nor his qualified representative attended the Company's 2017 Annual Meeting of Stockholders to present the Proponent's stockholder proposal contained in the Company's 2017 proxy statement.

A copy of the 2019 Proposal, which would require the Company to amend its charter and bylaws to implement simple majority voting, is attached hereto as Exhibit A.

## **ANALYSIS**

### **The 2019 Proposal May Be Excluded Under Rule 14a-8(h)(3) Because Neither The Proponent Nor His Qualified Representative Attended The Company's 2017 Annual Meeting Of Stockholders To Present The Proponent's Stockholder Proposal Contained In The Company's 2017 Proxy Statement.**

Under Rule 14a-8(h)(1), a stockholder proponent must attend the stockholders' meeting to present his stockholder proposal or, alternatively, must send a representative who is qualified under state law to present the proposal on the proponent's behalf. Rule 14a-8(h)(3) provides that, if a stockholder or his qualified representative fails, without good cause, to appear and present a proposal included in a company's proxy materials, the company will be permitted to exclude all of such stockholder's proposals from the company's proxy materials for any meetings held in the following two calendar years.

The Company intends to omit the 2019 Proposal from its 2019 Proxy Materials because the Proponent failed, without good cause, to attend the Company's 2017 Annual Meeting of Stockholders held on May 31, 2017 in New York, New York (the "2017 Annual Meeting") to present a stockholder proposal that he had submitted for that meeting (the "2017 Proposal"). The Company gave timely notice regarding the 2017 Annual Meeting to the Company's stockholders, and, consistent with SEC regulations and Delaware law, the notice clearly delineated the date, time, and location of the Company's 2017 Annual Meeting. The Company included the 2017 Proposal, see Exhibit B, in the Company's 2017 proxy statement as Proposal 6 (an excerpt of which is attached hereto as Exhibit C) and was prepared to allow the Proponent, or his qualified representative, to present the 2017 Proposal at the Company's 2017 Annual Meeting. However, neither the Proponent nor a qualified representative of the Proponent attended the Company's 2017 Annual Meeting to present the 2017 Proposal. The Proponent did not provide the Company with any explanation for his, or

his qualified representative's, absence. Accordingly, as stated under Item 5.07 of the Company's Form 8-K filed on June 1, 2017, the 2017 Proposal was not considered or voted on at the 2017 Annual Meeting because "the proposal was not properly presented."<sup>1</sup>

On numerous occasions the Staff has concurred that a company may exclude a stockholder proposal under Rule 14a-8(h)(3) because the proponent or his qualified representative, without good cause, failed to appear and present a proposal at either of the company's previous two years' annual meetings. *See, e.g., Expeditors International of Washington, Inc.* (avail. Jan. 20, 2016); *E.I. du Pont de Nemours and Co. (Phippen)* (avail. Feb. 16, 2010); *State Street Corp.* (avail. Feb. 3, 2010); *Entergy Corp.* (avail. Jan. 12, 2010); *Comcast Corp.* (avail. Feb. 25, 2008); *Eastman Kodak Co.* (avail. Dec. 31, 2007) (in each case, concurring with the exclusion of a stockholder proposal under Rule 14a-8(h)(3) where the proponent failed to appear and present their stockholder proposal in the prior year). *See also The Dow Chemical Company* (avail. Jan. 24, 2017); *McDonald's Corp.* (avail. Mar. 3, 2015); *Entergy Corp.* (avail. Jan. 12, 2010, *recon. denied* Mar. 16, 2010); *Comcast Corp.* (avail. Feb. 25, 2008) (in each case, concurring with the exclusion of a stockholder proposal under Rule 14a-8(h)(3) submitted for an annual meeting where the proponent had failed to appear and present its proposal at the annual meeting two years prior).

Consistent with the precedent cited above, the Company believes that under Rule 14a-8(h)(3) it may: (i) exclude the 2019 Proposal from the 2019 Proxy Materials; and (ii) omit any proposal made by the Proponent from the proxy materials for all stockholders' meetings held in calendar year 2019.

## CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the 2019 Proposal from its 2019 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be directed to Karen Dempsey of Orrick, Herrington & Sutcliffe LLP at (415) 773-4140 or at [kdempsey@orrick.com](mailto:kdempsey@orrick.com).

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<sup>1</sup> See [https://www.sec.gov/Archives/edgar/data/1080056/000161577417002859/s106419\\_8k.htm](https://www.sec.gov/Archives/edgar/data/1080056/000161577417002859/s106419_8k.htm)

Office of Chief Counsel  
Division of Corporation Finance  
January 8, 2019  
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Lundberg', with a large, stylized flourish extending from the end of the signature.

Eric F. Lundberg  
Chief Financial Officer

Enclosures

cc: Kenneth Steiner  
John Chevedden

**EXHIBIT A**

Kenneth Steiner

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Ms. Heather Mars  
Corporate Secretary  
TheStreet, Inc. (TST)  
14 Wall Street  
15th Floor  
New York, NY 10005  
PH: 212-321-5000

Dear Ms. Mars,

I purchased stock in our company because I believed our company had potential for improved performance. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

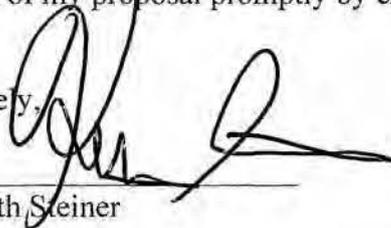
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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to

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Sincerely,



Kenneth Steiner

10-9-18

Date

cc: Richard Broitman <Richard.Broitman@thestreet.com>  
Chief Accounting Officer  
Yasmin Gamboa <yasmin.gamboa@thestreet.com>  
Counsel

[TST: Rule 14a-8 Proposal, November 6, 2018]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Simple Majority Vote**

RESOLVED, Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes taking the steps necessary to adjourn the annual meeting to solicit the votes necessary for approval if the votes for approval are lacking during the annual meeting.

Adjourn appears 17-times in the company governing documents. Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy’s. The proponents of these proposals included Ray T. Chevedden and William Steiner. The votes would have been higher than 74% to 88% if all shareholders had equal access to independent proxy voting advice.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority in an election in which 80% of shares cast ballots. In other words a 1%-minority have the power to prevent 79% of shareholders from taking important action such as eliminating 80%-voting thresholds in our governing documents.

Please vote yes:  
**Simple Majority Vote – Proposal [4]**

Kenneth Steiner,

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sponsors this proposal.

Notes:

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

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

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

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

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

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

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**EXHIBIT B**

Kenneth Steiner

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Mr. Eric Lundberg  
Corporate Secretary  
TheStreet, Inc. (TST)  
14 Wall Street  
15th Floor  
New York, NY 10005  
PH: 212-321-5000

REVISED

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Dear Mr. Lundberg,

I purchased stock in our company because I believed our company had greater potential. My attached Rule 14a-8 proposal is submitted in support of the long-term performance of our company. This Rule 14a-8 proposal is submitted as a low-cost method to improve company performance.

My proposal is for the next annual shareholder meeting. I will meet Rule 14a-8 requirements including the continuous ownership of the required stock value until after the date of the respective shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. This is my proxy for John Chevedden and/or his designee to forward this Rule 14a-8 proposal to the company and to act on my behalf regarding this Rule 14a-8 proposal, and/or modification of it, for the forthcoming shareholder meeting before, during and after the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden

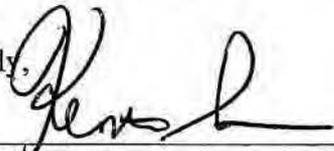
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to facilitate prompt and verifiable communications. Please identify this proposal as my proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. 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 my proposal promptly by email to

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Sincerely,



Kenneth Steiner

10-25-16

Date

cc: Richard Broitman <Richard.Broitman@thestreet.com>  
Chief Accounting Officer  
Yasmin Gamboa <yasmin.gamboa@thestreet.com>  
Counsel

[TST: Rule 14a-8 Proposal, November 29, 2016]  
[December 28, 2016 Revision]  
[This line and any line above it – *Not* for publication.]

**Proposal [4] – Simple Majority Vote**

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

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

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

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

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

Kenneth Steiner,

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sponsors this proposal.

Notes:

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

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

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

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

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

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

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**EXHIBIT C**

# TheStreet

## NOTICE OF ANNUAL MEETING OF STOCKHOLDERS TO BE HELD MAY 31, 2017

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of TheStreet, Inc. (the “Company”) will be held on Wednesday, May 31, 2017, at 8:30 a.m. Eastern Daylight Time, at the offices of Orrick, Herrington & Sutcliffe LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019. A WHITE proxy card and a Proxy Statement for the Annual Meeting are enclosed.

The Annual Meeting is for the purpose of considering and acting upon:

1. The election of three Class III directors as named in the proxy statement;
2. The ratification of the appointment of BDO USA, LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2017;
3. The advisory approval of the compensation of the Company’s named executive officers (“Say-on-Pay”);
4. The advisory approval of the frequency of future advisory votes on named executive officer compensation (“Say-on-Frequency”);
5. The approval of a management proposal to amend the Company’s Restated Certificate of Incorporation to declassify the Board of Directors and to provide for the annual election of directors beginning in 2018;
6. A stockholder proposal, if properly presented; and
7. Such other matters as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The close of business on April 5, 2017 has been fixed as the record date for determining stockholders entitled to notice of and to vote at the Annual Meeting or any adjournment or postponement thereof.

Information concerning the matters to be acted upon at the Annual Meeting is set forth in the accompanying Proxy Statement.

This year’s annual meeting is a particularly important one, and YOUR vote is essential. J. Carlo Cannell, Cannell Capital LLC and Tristan Partners L.P. (collectively, the “Dissident Nominating Stockholders” or “Dissident Group”), notified us of their nominations of one individual for election as director at the annual meeting.

**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE “FOR” THE ELECTION OF EACH OF THE BOARD’S NOMINEES IN THE COMPANY’S PROXY STATEMENT ON THE ENCLOSED WHITE PROXY CARD. THE BOARD DOES NOT ENDORSE THE ELECTION OF THE DISSIDENT GROUP’S NOMINEE AND STRONGLY URGES YOU NOT TO SUBMIT ANY PROXY CARD SENT TO YOU BY, OR ON BEHALF OF, THE DISSIDENT GROUP OR ANY OF ITS MEMBER’S AFFILIATES.**

If you already have submitted a proxy card sent to you by, or on behalf of, the Dissident Group, you can revoke that proxy by submitting another proxy from us. Only the latest validly executed proxy you submit will count, and any proxy may be revoked at any time prior to its exercise at the annual meeting as described in the accompanying Proxy Statement. Discard any proxy cards that are sent to you by the Dissident Group. The Board urges you not to

sign, return or vote any proxy cards sent to you by the Dissident Group even as a vote of protest because a submission of a proxy card from the Dissident Group will revoke your previously voted proxy card in support of the Board's nominees.

It is important that your shares be represented at the annual meeting whether or not you are personally able to attend. Accordingly, after reading the attached Notice of Annual Meeting of Stockholders and Proxy Statement, please promptly submit your proxy as described on your WHITE proxy card or WHITE voting instruction form. If you choose to submit your proxy to vote your shares by the WHITE proxy card or WHITE voting instruction form, please sign, date and mail the WHITE proxy card or WHITE voting instruction form in the enclosed postage-paid return envelope. You may also submit a proxy to vote by telephone or Internet. Instructions for submitting a proxy over the Internet or by telephone are provided on the enclosed WHITE proxy card. Your cooperation is greatly appreciated.

**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE "FOR" THE ELECTION OF EACH OF THE BOARD'S NOMINEES IN PROPOSAL 1 USING THE ENCLOSED WHITE PROXY CARD.**

**THE BOARD UNANIMOUSLY RECOMMENDS VOTING "FOR" PROPOSALS 2 AND 3, VOTING "ONE YEAR" ON PROPOSAL 4 AND "FOR" PROPOSAL 5 USING THE ENCLOSED WHITE PROXY CARD. THE BOARD MAKES NO RECOMMENDATION ON PROPOSAL 6.**

**THE BOARD URGES YOU NOT TO SIGN, RETURN OR VOTE ANY PROXY CARD SENT TO YOU BY THE DISSIDENT NOMINATING STOCKHOLDERS.**

Regardless of the number of shares of common stock of the Company that you own, your vote is important. Thank you for your continued support, interest and investment in the Company.

**If you have any questions or require any assistance with respect to voting your shares, please contact the Company's proxy solicitor at the contact listed below:**

M O R R O W  
S O D A L I

470 West Avenue  
Stamford, CT 06902  
Shareholders Call Toll Free: (800) 662-5200  
Banks and Brokers Call Collect: (203) 658-9400  
E-mail: TST@morrowsodali.com

By Order of the Board of Directors,



Heather Mars  
Secretary of the Company  
New York, New York

April 19, 2017

## PROPOSAL 6

### STOCKHOLDER PROPOSAL REGARDING ELIMINATION OF SUPERMAJORITY VOTING

In accordance with SEC rules, we have set forth below a stockholder proposal from Kenneth Steiner, along with the supporting statement of the stockholder proponent. The Company is not responsible for any inaccuracies that it may contain. Mr. Steiner has notified us that he is the beneficial owner of no less than 200 shares of the Company's common stock and intends to present the following proposal at the 2017 Annual Meeting through his designee, John Chevedden. Mr. Steiner's address is

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. In accordance with Rule 14a-8(h) of the Exchange Act, the stockholder proposal is required to be voted on at our Annual Meeting only if properly presented by the stockholder proponent or his qualified representative at the Annual Meeting.

#### **Proposal Six — Simple Majority Vote**

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

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

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

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

Please vote to enhance shareholder value:

#### **Simple Majority Vote — Proposal Six**

#### **The Company's Response**

The Board has carefully considered this proposal and has determined to make no recommendation either in favor or opposed to the foregoing proposal.

As part of the Board's continuing commitment to better serve the Company's corporate governance ideals and its stockholders' interests, the Board continuously monitors governance issues of interest to stockholders. The Board recognizes the growing sentiment that the elimination of supermajority voting provisions in a company's constituent documents increases a board's accountability to stockholders and increases the ability of stockholders to participate effectively in corporate governance. The Board believes that meaningful stockholder participation is critical to the Company's success. For example, the Board demonstrated its support of majority voting by amending the Company's By-Laws and Corporate Governance Guidelines to require a majority of votes cast, rather than a plurality of votes, to elect each director. Further, the Company has included a proposal for its 2017 Annual Meeting to eliminate the Company's classified board structure in furtherance of the Company's continuing commitment to serve the long-term interests of all Company stockholders.

While our Board has determined not to make a recommendation either in favor of or opposed to the foregoing proposal, we continue to support the current supermajority voting requirements that are contained in the Company's Restated Certificate of Incorporation and By-Laws

Our limited supermajority voting provisions do not preclude changes to our corporate governance, nor do they even apply to the vast majority of potential changes. They apply only to a narrow set of fundamental changes, such as approval of the amendment or repeal of, or to adopt a By-Law that is inconsistent with, specified provisions of the By-Laws and amend specified provisions of the Restated Certificate of Incorporation. The Company's supermajority provision is also required to adopt a plan of merger and is intended to protect the Company and its stockholders from unsolicited acquisition proposals and hostile takeover initiatives to ultimately preserve and maximize stockholder value and provide protection for all stockholders against self-interested actions by one or a small group of stockholders. The Board does not intend these provisions to preclude unsolicited, fair offers to acquire the Company. The provisions are generally designed to encourage any such potential acquirer to negotiate directly with the Board. These protections are important because such proposals may include terms that our Board determines to be harmful to the Company's mission and long-term objectives, or otherwise unfair to its stockholders. These requirements also provide our Board and stockholders with a chance to fully understand the terms of such a transaction, negotiate improvements to them, and evaluate strategic alternatives that may be in the best interests of the Company and its stockholders.

Contrary to the argument made in the stockholder proposal, limited supermajority voting provisions have nothing to do with a 1% minority frustrating the outcome of a vote, something that could be said of any election where the outcome is decided by less than 1% (regardless of whether the election is based on a plurality, a majority, or a supermajority voting standard). These provisions are simply about ensuring that there is a broad consensus of support before a fundamental change is adopted that could impact the Company's mission and long-term objectives.

**The Board of Directors makes no recommendation for this Stockholder Proposal Regarding Simple Majority Voting**