

JOHN CHEVEDDEN

February 9, 20120

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

5 Rule 14a-8 Proposal
Fortive Corporation (FTV)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 19, 2019 no-action request.

Shareholders could vote in regard to both the 2020 management proposal and the 2020 rule 14a-8 proposal because the management proposal does not include the multiple “more than a majority vote” provisions in regard to its preferred stock.

By now omitting its “more than a majority vote” provisions in regard to its preferred stock management is going against the bedrock principle of its no action request:
“The purpose of the Rule 14a-8(i)(10) exclusion is to ‘avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.’
Commission Release No. 34-12598 (July 7, 1976).”

Thus in 2021 company shareholders could still be faced with a decision regarding the “more than a majority vote” provisions of the company addressed by a rule 14a-8 proposal even if they approve the 2020 management proposal.

The company did not say it had zero preferred stock or that it never intends to issue preferred stock.

Sincerely,



John Chevedden

cc: Daniel B. Kim <daniel.kim@fortive.com

Lillian Brown

+1 202 663 6743 (t)

+1 202 663 6363 (f)

lillian.brown@wilmerhale.com

February 6, 2020

[Via E-mail to shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: Fortive Corporation
Exclusion of Shareholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

We are writing to supplement our December 19, 2019 request (the “No-Action Request”) that the Staff advise Fortive Corporation (the “Company”) that the Staff will not recommend any enforcement action to the Commission if the Company excludes the shareholder proposal and supporting statement (collectively, the “Shareholder Proposal”) submitted by John Chevedden (the “Proponent”) from its Proxy Materials pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Company has substantially implemented the Shareholder Proposal, or, alternatively, pursuant to Rule 14a-8(i)(3) of the Exchange Act, on the basis that the Shareholder Proposal is materially false and misleading in violation of Rule 14a-9. Capitalized terms used but not defined in this letter shall have the meanings provided in the No-Action Request. In accordance with Rule 14a-8(j), a copy of this supplemental letter is being sent to the Proponent.

In the No-Action Request, we outlined the basis for exclusion of the Shareholder Proposal in reliance upon Rule 14a-8(i)(10) and noted that the Board intended to (a) approve amendments (the “Charter Amendments”) to the Company’s Amended and Restated Certificate of Incorporation, as amended (the “Charter”) that would replace all supermajority voting provisions

February 6, 2020

Page 2

in the Charter that apply to the Company's common stock with a majority of the outstanding shares standard and (b) approve the agenda for the 2020 Annual Meeting of Shareholders, which will include seeking shareholder approval of the Charter Amendments (the "Company Proposal"). In the No-Action Request, which we incorporate by reference herein with respect to the Rule 14a-8(i)(10) analysis and discussion, we advised the Staff that the Company would notify the Staff by a supplemental letter of the Board's actions in this regard.

We write to confirm that at a meeting held on January 28, 2020, the Board approved the Charter Amendments such that amendments to Article V (Board of Directors); Article VI (Stockholders); Article VII (Limit of Liability/Indemnification); Article IX (Amendment) and amendments to the Company's bylaws may be approved by a majority of the percentage of the voting power of the shares entitled to vote for election of directors, rather than the current 80% requirement.

A copy of the Charter Amendments is attached to this letter as Exhibit A. During the January 28, 2020 meeting, the Board also approved the agenda for the 2020 Annual Meeting of Shareholders, at which the Company will provide its shareholders with an opportunity to vote on the Company Proposal to approve the Charter Amendments. A draft of the Company Proposal is attached to this letter as Exhibit B.

Rule 14a-8(i)(10) Analysis

The purpose of the Rule 14a-8(i)(10) exclusion is to "avoid the possibility of shareholders having to consider matters which have been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976). As noted in the No-Action Request, the Staff has consistently concurred in exclusion of proposals similar to the Shareholder Proposal under Rule 14a-8(i)(10) where such proposals have sought elimination of provisions requiring "a greater than simple majority vote," including in situations where the company replaces a supermajority vote with, or retains an existing voting standard based on, a majority of shares outstanding.

The Shareholder Proposal requests that the "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." However, the Shareholder Proposal's supporting statement makes clear that the primary focus and essential objective is the removal of supermajority voting provisions. As in Fortive Corporation (March 13, 2019), Invesco Ltd. (March 8, 2019), United Technologies Corporation (March 1, 2019), AbbVie Inc. (February 27, 2019), Cadence Design Systems, Inc. (February 27, 2019), NCR Corporation (February 15, 2019) and other no-action letters cited in the No-Action Request in which the Staff concurred in exclusion under Rule 14a-8(i)(10) of proposals similar to the Shareholder Proposal, the Charter Amendment would eliminate all supermajority voting provisions that apply to the Company's common stock with a lower majority voting standard.

February 6, 2020

Page 3

The only supermajority provisions that are not addressed by the Company in the Charter Amendments are those that require more than a majority vote of holders of the Company's series of preferred shares. As discussed in the No-Action Request, we do not believe the focus of the Shareholder Proposal is preferred shares. Further, as in Fortive Corporation (March 13, 2019); Invesco Ltd. (March 8, 2019), Cadence Design Systems, Inc. (February 27, 2019), State Street Corporation (March 5, 2018) and other no-action letters cited in the No-Action Request, the Staff has on a number of occasions concurred in exclusion under Rule 14a-8(i)(10) of proposals similar to the Shareholder Proposal where companies have eliminated supermajority voting provisions applicable to votes of the companies' common shares but have retained supermajority voting provisions related to holders of the company's preferred shares.

Consistent with the line of precedent cited above and in the No-Action Request, the Company believes that it has substantially implemented the Shareholder Proposal. In this regard, the Charter Amendments compare favorably with the guidelines of the Shareholder Proposal and more than satisfy its essential objective notwithstanding that the Charter Amendments do not precisely track the Shareholder Proposal's terms. Because the Charter Amendments require shareholder approval, by approving the Company Proposal and including the Company Proposal in the Proxy Materials for shareholder consideration, the Board has taken all steps necessary and within its power to substantially implement the Shareholder Proposal. For all of these reasons and those stated in the No-Action Request, the Company believes the Shareholder Proposal may be excluded under Rule 14a-8(i)(10).

Conclusion

For all of the reasons set forth above and in the No-Action Request, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10), on the basis that the Company has substantially implemented the Shareholder Proposal, or, alternatively, pursuant to Rule 14a-8(i)(3), on the basis that the Shareholder Proposal is materially false and misleading in violation of Rule 14a-9.

February 6, 2020
Page 4

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Shareholder Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743, or Daniel Kim, Vice President and Associate General Counsel and Secretary, Fortive Corporation at daniel.kim@fortive.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lillian Brown".

Lillian Brown

Enclosures

cc: Daniel B. Kim
John Chevedden

EXHIBIT A

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

**FORTIVE CORPORATION
(a Delaware corporation)**

Fortive Corporation (the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

1. The name of the Corporation is Fortive Corporation. The Corporation was originally incorporated under the name TGA Holding Corp. The original Certificate of Incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on November 10, 2015, and it was amended by a Certificate of Amendment to the Certificate of Incorporation, filed with the office of the Secretary of State of the State of Delaware on December 2, 2015, changing the Corporation’s name from TGA Holding Corp. to Fortive Corporation. In addition, the Certificate of Incorporation of the Corporation was previously amended and restated, and filed with the office of the Secretary of State of the State of Delaware, on July 1, 2016 ~~and on June 7, 2017 (as amended and restated on June 7, 2017,~~ the “Prior Amended and Restated Certificate of Incorporation”).
2. This Amended and Restated Certificate of Incorporation, which restates and further amends the Prior Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the board of directors of the Corporation (the “Board”) and the stockholders of the Corporation.
3. Pursuant to Section 103(d) of the DGCL, this Amended and Restated Certificate of Incorporation shall become effective at 11:59 p.m. (Eastern Time) on June ~~7, 2017~~, 2020.
4. The Certificate of Incorporation of the Corporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

NAME

Section 1.01 Name. The name of the Corporation is Fortive Corporation.

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

Section 2.01 Registered Address. The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of the registered agent of the Corporation is The Corporation Trust Company.

ARTICLE III

CORPORATE PURPOSE

Section 3.01 Corporate Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITAL STOCK

Section 4.01 Authorized Capital Stock. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 2,015,000,000, consisting of: (i) 2,000,000,000 shares of common stock, par value \$.01 per share (the “Common Stock”); and (ii) 15,000,000 shares of preferred stock, par value \$.01 per share (the “Preferred Stock”).

Section 4.02 Common Stock. The powers, preferences and relative participating, optional or other special rights, and the qualifications, limitations and restrictions of the Common Stock are as follows:

(a) Ranking. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board upon any issuance of the Preferred Stock of any series.

(b) Voting. Each share of Common Stock shall entitle the holder thereof to one vote in person or by proxy for each share on all matters on which such stockholders are entitled to vote. Except as expressly set forth in the applicable Certificate of Designations with respect to any such series of Preferred Stock, the holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any Certificate of Designations) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon.

(c) Dividends. The holders of shares of Common Stock shall be entitled to receive ratably such dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board in its sole discretion from time to time out of assets or funds of the Corporation legally available therefor, subject to any preferential rights of any then outstanding Preferred Stock and any other provisions of this Amended and Restated Certificate of Incorporation, as may be amended from time to time.

(d) Liquidation. Upon the dissolution, liquidation or winding up of the affairs of the Corporation, whether voluntary or involuntary, after payment or provision for payment of the debts and other liabilities of the Corporation, holders of Common Stock shall be entitled to receive all remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them and subject to any preferential rights of any then outstanding Preferred Stock.

(e) No Preemptive or Subscription Rights. No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

(f) Recapitalization. Upon effectiveness of the Prior Amended and Restated Certificate of Incorporation, the 100 shares of the Common Stock issued and outstanding immediately prior to the effectiveness of the Prior Amended and Restated Certification of Incorporation were automatically reclassified and thereafter represented 345,237,561 shares of Common Stock.

Section 4.03 Preferred Stock. The Board is hereby expressly authorized to provide, out of the unissued shares of Preferred Stock, for the issuance of all or any of the shares of Preferred Stock in one or more series and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, full or limited, if any, of the shares of such series, and the preferences and relative participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series. The powers, preferences and relative participating, optional and other special rights of each series of preferred stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

The authority of the Board with respect to each series of Preferred Stock shall include, but not be limited to, the determination of the following:

(a) the designation of the series, which may be by distinguishing number, letter or title;

(b) the number of shares of the series, which number the Board may thereafter increase or decrease, but not below the number of shares thereof then outstanding;

(c) the entitlement to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and 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 of capital stock;

(d) the redemption rights and price or prices, if any, for shares of the series;

(e) the terms and amount of any sinking fund, if any, provided for the purchase or redemption of shares of the series;

(f) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

(g) whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of the Corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange

may be made;

(h) restrictions on the issuance of shares of the same series or any other class or series;

(i) the voting rights, if any, of the holders of shares of the series generally or upon specified events; and

(j) any other powers, preferences and relative participating, optional or other special rights of each series of Preferred Stock, and any qualifications, limitations or restrictions of such shares,

all as may be determined from time to time by the Board and stated in the resolution or resolutions providing for the issuance of such Preferred Stock.

Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

ARTICLE V

BOARD OF DIRECTORS

Section 5.01 Election of Directors. Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so require.

Section 5.02 Annual Meeting. The annual meeting of the stockholders for the election of directors and for the transaction of such business as may properly come before the meeting shall be held at such date, time and place, if any, as shall be determined solely by the resolution of the Board in its sole and absolute discretion.

Section 5.03 Number of Directors. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board. Subject to the rights of holders of Preferred Stock, if any, the Board shall consist of not less than three (3) or greater than fifteen (15), the exact number of which shall be fixed from time to time exclusively pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board, and subject to the rights of the holders of the Preferred Stock, if any, the exact number may be increased or decreased by such a resolution (but not to less than three (3) or greater than fifteen (15)).

Section 5.04 Terms of Office. Other than those directors, if any, elected by the holders of any series of Preferred Stock, the Board shall be and is divided into three classes, as nearly equal in number as possible, designated as: Class I, Class II and Class III. In case of any increase or decrease, from time to time, in the number of directors, the number of directors in each class shall be apportioned as nearly equal as possible.

Notwithstanding the foregoing, except for the terms of such additional directors, if any, as elected by the holders of any series of Preferred Stock, (a) at the 2018 annual meeting of stockholders, the directors whose terms expire at that meeting shall be elected to hold office for a three-year term expiring at the 2021 annual meeting of stockholders (until the 2021 annual meeting of stockholders, the "2021 Class Directors"); (b) at the 2019 annual meeting of stockholders, the directors whose terms expire at that meeting (until the 2019 annual meeting of the stockholders, the "2019 Class Directors") shall be elected to hold office for a one-year term expiring at the 2020 annual meeting of stockholders; (c) at the 2020 annual meeting of stockholders, the directors whose terms expire at that meeting (until the 2020 annual meeting of the stockholders, the "2020 Class Directors") and, together with the 2019 Class Directors and 2021 Class Directors, the "Continuing Classified Directors") shall be elected to hold office for a one-year term expiring at the 2021 annual meeting of stockholders; and (d) at the 2021 annual meeting of stockholders and each annual meeting of stockholders thereafter, all directors shall be elected for a one-year term expiring at the next annual meeting of stockholders. Pursuant to such procedures, effective as of the 2021 annual meeting of stockholders, the Board of Directors will no longer be classified under Section 141(d) of the General Corporation Law of Delaware.

No decrease in the number of directors shall shorten the term of any incumbent director.

Section 5.05 Vacancies; Removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any vacancy in the Board of Directors resulting from the death, resignation, retirement, disqualification or removal of any director or other cause, or any newly created directorship resulting from an increase in the authorized number of directors, shall be filled exclusively by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Any director (a) appointed to fill a vacancy caused by the death, resignation, retirement, disqualification or removal of any Continuing Classified Director shall have a term expiring at the corresponding annual meeting of stockholders at which the term of such Continuing Classified Director would have expired, and (b) appointed to fill a newly created directorship resulting from an increase in the authorized number of directors, shall have a term expiring at the next subsequent annual meeting of stockholders, in each of case (a) or (b) subject to the election and qualification of a successor and to such director's earlier death, resignation or removal. Subject to the rights of the holders of any series of Preferred Stock then outstanding with respect to any directors elected by the holders of such series, any director, or the entire Board of Directors, may be removed with or without cause by the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to elect such director, except that any Continuing Classified Director and any director appointed to fill a vacancy caused by the death, resignation, retirement, disqualification or removal of any Continuing Classified Director may be removed only for cause.

Section 5.06 Authority. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate of Incorporation, and any Bylaws of the Corporation adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

Section 5.07 Advance Notice. Advance notice of stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the Corporation.

ARTICLE VI

STOCKHOLDERS

Section 6.01 Cumulative Voting. No holder of Common Stock of the Corporation shall be entitled to exercise any right of cumulative voting.

Section 6.02 Stockholder Action. Subject to the terms of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation, and the ability of the stockholders to consent in writing to the taking of any action in lieu of a meeting is hereby specifically denied.

Section 6.03 Special Meetings. Unless otherwise required by law or the terms of any resolution or resolutions adopted by the Board providing for the issuance of a class or series of the Preferred Stock, special meetings of stockholders, for any purpose or purposes, may be called by the Secretary upon a written request delivered to the Secretary by (i) the Board as set forth in the Corporation's Bylaws, (ii) the Chairman of the Board or (iii) the Chief Executive Officer of the Corporation. The ability of the stockholders to call a special meeting of stockholders is hereby specifically denied. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

ARTICLE VII

LIMITATION ON LIABILITY; INDEMNIFICATION

Section 7.01 Limitation on Liability. To the fullest extent permitted by the DGCL, as it now exists and as it may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of a fiduciary duty as a director, except for liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit; provided that if the DGCL shall be amended or modified to provide for exculpation for any director in any circumstances where exculpation is prohibited pursuant to any of the preceding clauses (a) through (d), then such directors shall be entitled to exculpation to the maximum extent permitted by such amendment or modification. No amendment to, modification of or repeal of this Section 7.01 shall apply to or have any adverse effect on any right or protection of, or any limitation of the liability of, a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions of such director occurring prior to such amendment, modification or repeal.

Section 7.02 Indemnification. The Corporation shall indemnify to the full extent authorized or permitted by law any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact that he, his testator or intestate, is or was a director or officer of the Corporation or by reason of the fact that such director or officer, at the request of the Corporation, is or was serving any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity. Nothing contained herein shall affect any rights to indemnification to which employees other than directors and officers may be entitled by law.

The Corporation may 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 a director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, manager, officer, employee, trustee or agent of, or in a fiduciary capacity with respect to, another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Section 7.02.

The right of indemnification provided in this Section 7.02 shall not be exclusive, and shall be in addition to any other right to which any person may otherwise be entitled by law, statute, under the Bylaws of the Corporation, or under any agreement, vote of stockholders or disinterested directors, or otherwise. Any amendment, repeal or modification of this Section 7.02 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VIII

FORUM SELECTION

Section 8.01 Forum Selection. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders; (iii) any action asserting a claim arising pursuant to any provision of the DGCL; or (iv) any action asserting a claim governed by the internal affairs doctrine; provided, however, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 8.01 of Article VIII. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunction and specific performance, to enforce the foregoing provisions.

ARTICLE IX

AMENDMENT

Section 9.01 Certificate of Incorporation. The Corporation shall have the right, from time to time, to amend, alter, change or repeal any provision of this Amended and Restated Certificate of Incorporation in any manner now or hereafter provided by this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation or the DGCL, and all rights, preferences, privileges and powers of any kind conferred upon any director or stockholder of the Corporation by this Amended and Restated Certificate of Incorporation or any amendment thereof are conferred subject to such right.

~~Notwithstanding anything contained in this Amended and Restated Certificate of Incorporation to the contrary (and in addition to any vote required by law), the affirmative vote of the holders of at least 80% of the voting power of the shares entitled to vote for the election of directors shall be required to amend, alter, change, or repeal or to adopt any provision inconsistent with Article V, Article VI, Article VII and this Article IX.~~

Section 9.02 Bylaws. In furtherance and not in limitation of the powers conferred by law, the Board is expressly authorized and empowered, without the assent or vote of the stockholders, to adopt, amend and repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board shall require the approval by the majority of the entire Board. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Corporation;

provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least 80% a majority of the voting power of the shares entitled to vote for the election of directors shall be required to amend, repeal or adopt any provision of the Bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation as of this 6th 2nd day of June 20172020.

FORTIVE CORPORATION

By: _____

Name: Daniel B. Kim

Title: Secretary

EXHIBIT B

Proposal 4. Approval of Fortive’s Amended and Restated Certificate of Incorporation, as Amended and Restated to Eliminate the Supermajority Voting Requirements Applicable to Shares of Common Stock

Article IX of our Amended and Restated Certificate of Incorporation (“Charter”) provides that a supermajority vote of 80% of the voting power of the shares entitled to vote for the election of directors will be required to amend, alter, change, or repeal or to adopt any provision inconsistent with Article V (Board of Directors), Article VI (Stockholders), Article VII (Limitation of Liability; Indemnification), or Article IX (Amendment) of the Charter or to amend, repeal or adopt any provision of the Bylaws.

The supermajority voting requirement in the Charter was adopted by Danaher as the sole shareholder of Fortive prior to the Separation when Fortive was a wholly-owned subsidiary of Danaher.

As demonstrated by the Company’s recent governance actions, the Board is dedicated to strong corporate governance and has adopted a number of practices and procedures that promote effective corporate governance and Board accountability. Since the separation from Danaher in July 2016, through a stockholder vote, the Company proactively amended the Charter and By-Laws to eliminate the classified board after a sunset period. In addition, the Company proactively amended the Bylaws to provide for proxy access. Furthermore, the Board has maintained a majority vote requirement for election of directors.

The Board has reviewed, and expects to continue to review, the corporate governance policies and practices implemented within the Charter and Bylaws prior to the Separation to determine whether such policies and practices will protect the long-term shareholder value. After considering the advantages and disadvantages of supermajority voting requirements applicable to the shares of common stock in the Charter, the board has approved, subject to approval of this Proposal 4 by the shareholders, to further amend and restate the Charter (as further amended, “New Charter”) to eliminate the supermajority voting requirements noted above in favor of a majority of the shares of common stock outstanding. No conforming amendments to the By-laws will be required to effectuate the elimination of the supermajority voting requirements noted above.

The New Charter would become effective upon the filing of the New Charter with the Secretary of State of the State of Delaware, which we would file promptly following the Annual Meeting if our shareholders approve the New Charter.

The New Charter is attached to this proxy statement as Appendix A. The affirmative vote of the holders of 80 percent of the outstanding shares of our common stock entitled to vote generally in the election of directors on the record date is required to approve this proposal pursuant to the Charter.

The Board of Directors recommends that shareholders vote “FOR” the approval of our Amended and Restated Certificate of Incorporation, as amended and restated to eliminate the supermajority voting requirements applicable to shares of our common stock.

JOHN CHEVEDDEN

January 28, 2020

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

3 Rule 14a-8 Proposal
Fortive Corporation (FTV)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

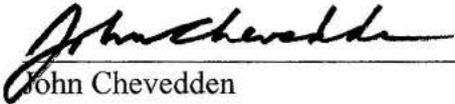
This is in regard to the December 19, 2019 no-action request.

Company management said:

“The purpose of the Rule 14a-8(i)(10) exclusion is to ‘avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.’
Commission Release No. 34-12598 (July 7, 1976).”

Management provided no evidence from this 1976 document that “favorably acted upon” was meant to include acting favorably in a proven ineffective manner.

Sincerely,



John Chevedden

cc: Daniel B. Kim <daniel.kim@fortive.com>

JOHN CHEVEDDEN

January 22, 2020

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

2 Rule 14a-8 Proposal
Fortive Corporation (FTV)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 19, 2019 no-action request.

Company management said:

“The purpose of the Rule 14a-8(i)(10) exclusion is to ‘avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.’
Commission Release No. 34-12598 (July 7, 1976).”

However company management provided no evidence that in 1976 the Commission had in mind a situation where:

- Management would take limited action.
- Management had the option of taking additional action.
- Management had a history of total failure in an identical situation.
- There was a high risk of total failure again.
- There was no incentive for management to succeed because there was an unlimited opportunity to repeat the failed process.

Sincerely,


John Chevedden

cc: Daniel B. Kim <daniel.kim@fortive.com>

JOHN CHEVEDDEN

December 31, 2019

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

1 Rule 14a-8 Proposal
Fortive Corporation (FTV)
Simple Majority Vote
John Chevedden

Ladies and Gentlemen:

This is in regard to the December 19, 2019 no-action request which is an afford to common sense.

Management claimed to take "all necessary actions" in its failed 2019 carbon copy response to this same proposal topic.

How can the management claim to take "all necessary actions" when it does not even say that it did a Google search on proxy solicitor?

Management was given discretion on the means to obtain approval for its 2019 failed proposal. Management clearly failed to exercise proper discretion and should not get another chance. There is no requirement that management subject its version of this topic to a shareholder vote.

But if it does it should at least be required to exercise proper discretion.

This is to request that the Securities and Exchange Commission allow this resolution to stand and be voted upon in the 2019 proxy.

Sincerely,


John Chevedden

cc: Daniel B. Kim <daniel.kim@fortive.com>

[FTV: Rule 14a-8 Proposal, October 21, 2019]
[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.

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. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. The proponents of these proposals included Ray T. Chevedden and William Steiner. This proposal topic also received overwhelming 99%-support at the 2019 Fortive annual meeting.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority in an election with 80% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governance of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply say out-to-lunch in response to an overwhelming 79%-vote of shareholders.

This proposal will pave the way for adoption of annual election of each director in order to address any complacency by our directors as our stock was flat in the year leading up to the submittal of this 2020 proposal. Annual election of each director is particularly important when 2 directors standing for election in 2019 were each rejected by more than 8-times the negative votes received by one of our other directors at the same meeting. The directors with the poor 2019 showing included Alan Spoon, Fortive Chairman, and Mitchell Rales.

Please vote yes:

Simple Majority Vote – Proposal [4]
[The above line – *Is* for publication.]

December 19, 2019

Lillian Brown

Via E-mail to shareholderproposals@sec.gov

+1 202 663 6743 (t)
+1 202 663 6363 (f)
lillian.brown@wilmerhale.com

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

Re: Fortive Corporation
Exclusion of Shareholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

We are writing on behalf of our client, Fortive Corporation (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2020 Annual Meeting of Shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Shareholder Proposal”) submitted by John Chevedden (the “Proponent”) requesting that the board of directors of the Company (the “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.”

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Shareholder Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Company has substantially implemented the Shareholder Proposal, or, alternatively, pursuant to Rule 14a-8(i)(3) of the Exchange Act, on the basis that the Shareholder Proposal is materially false and misleading in violation of Rule 14a-9.

Pursuant to Rule 14a-8(j) of the Exchange Act and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter and the Shareholder Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

U.S. Securities and Exchange Commission
December 19, 2019
Page 2

Shareholder Proposal

On October 21, 2019, the Company received the Shareholder Proposal from the Proponent, which states, in relevant part:

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.

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. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. The proponents of these proposals included Ray T. Chevedden and William Steiner. This proposal topic also received overwhelming 99%-support at the 2019 Fortive annual meeting.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority in an election with 80% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governance of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply say out-to-lunch in response to an overwhelming 79%-vote of shareholders.

This proposal will pave the way for adoption of annual election of each director in order to address any complacency by our directors as our stock was flat in the

U.S. Securities and Exchange Commission
December 19, 2019
Page 3

year leading up to the submittal of this 2020 proposal. Annual election of each director is particularly important when 2 directors standing for election in 2019 were each rejected by more than 8-times the negative votes received by one of our other directors at the same meeting. The directors with the poor 2019 showing included Alan Spoon, Fortive Chairman, and Mitchell Rales.

Background

The Company's Amended and Restated Certificate of Incorporation, as amended (the "Charter"), currently contains supermajority voting provisions. The Company's bylaws do not contain any supermajority provisions.

In connection with the 2019 Annual Meeting of Shareholders (the "2019 Annual Meeting"), the Company received the same proponent's virtually identical proposal requesting that the Board take "each step necessary so that each voting requirement in [the Company's] charter and bylaws ... that calls for a greater than simple majority vote be eliminated." In response to the proponent's 2019 proposal, the Board took all necessary actions to substantially implement such proposal by including in the proxy statement and proxy distributed in connection with the 2019 Annual Meeting a proposal to approve amendments to the Charter to eliminate the supermajority voting requirements applicable to shares of the Company's common stock (the "2019 Charter Amendment Proposal") and providing the Company's shareholders with the opportunity to approve the 2019 Charter Amendment Proposal at the 2019 Annual Meeting. However, despite the Board having taken all necessary actions to substantially implement the Proponent's 2019 proposal, the 2019 Charter Amendment Proposal did not receive adequate support from shareholders at the 2019 Annual Meeting.

Similar to the Board's previous response to the proponent's proposal, the Board is expected to approve on or about January 28, 2020 amendments to the Charter (the "Charter Amendments") that would replace all supermajority voting provisions in the Charter that apply to the Company's common stock with a majority of the outstanding shares standard. Specifically, the Board is expected to approve amendments to its Charter so that amendments to Article V (Board of Directors); Article VI (Stockholders); Article VII (Limit of Liability/Indemnification); Article IX (Amendment) and amendments to the Company's bylaws may be approved by a majority of the percentage of the voting power of the shares entitled to vote for election of directors, rather than the current 80% requirement.

Because the Charter Amendments require shareholder approval to become effective, the Board is expected to approve the agenda for the 2020 Annual Meeting of Shareholders, which will include

U.S. Securities and Exchange Commission
December 19, 2019
Page 4

seeking shareholder approval of the Charter Amendments (the “Company Proposal”). The Board is expected to recommend that shareholders vote “for” the Charter Amendments. If the Charter Amendments receive the requisite shareholder approval, all supermajority voting requirements in the Charter pertaining to the Company’s common stock will be removed.

By the time the Proxy Materials are filed, the Board will have approved the Company Proposal, and the Company plans to include the Company Proposal in the Proxy Materials. We are submitting this letter before the approval of the Company Proposal to address the timing requirements of Rule 14a-8(j). Once formal action has been taken by the Board to approve the Company Proposal, the Company will notify the Staff that these actions have been taken and provide the full text of the Company Proposal for which the Company will be seeking shareholder approval.

Bases for Exclusion

The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Shareholder Proposal

The purpose of the Rule 14a-8(i)(10) exclusion is to “avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.” Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a shareholder proposal only when the proposal was “‘fully’ effected” by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been “substantially implemented.” Commission Release No. 34-20091 (August 16, 1983) and Commission Release No. 40018 (May 21, 1998) (the “1998 Release”). In applying this standard, the Staff has noted that “a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (March 6, 1991, recon. granted March 28, 1991). In addition, when a company can demonstrate that it already has taken actions that address the “essential objective” of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot, even where the company’s actions do not precisely mirror the terms of the shareholder proposal.

The Staff has consistently concurred in exclusion of proposals similar to the Shareholder Proposal under Rule 14a-8(i)(10) where such proposals have sought elimination of provisions requiring “a greater than simple majority vote,” including in situations where the company replaces a supermajority vote with, or retains an existing voting standard based on, a majority of shares

outstanding. Many of these letters have been granted where the Board lacks unilateral authority to amend the company's charter documents but where the company intends to submit appropriate amendments for shareholder approval that replace supermajority voting standards. For example, in Fortive Corporation (March 13, 2019), the Staff concurred in exclusion under Rule 14a-8(i)(10) of a virtually identical proposal from the same proponent to the Shareholder Proposal that also requested "that each voting requirement in [the company's] charter and bylaws ... that calls for a greater than simple majority vote be eliminated, and replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws." In granting no-action relief, the Staff noted that the company "will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation which, if approved, will eliminate all supermajority voting provisions in the Company's governing documents that are applicable to the Company's common shareholders" and where the company proposed replacing all supermajority voting provisions in its charter that apply to the Company's common stock with a majority of the outstanding shares standard. See also KeyCorp (March 22, 2019) (in which the Staff concurred in the exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company's charter and bylaws that call for "for a greater than simple majority vote"); The Southern Company (March 13, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company's charter and bylaws that call for "a greater than simple majority vote," where the Staff noted that the company "will provide shareholders at its 2019 annual meeting with an opportunity to approve an amendment to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company's governing documents"); Invesco Ltd. (March 8, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company's charter and bylaws that call for "a greater than simple majority vote," where the Staff noted that the company "will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its bylaws which, if approved, will eliminate all supermajority voting provisions in the Company's governing documents that are applicable to the Company's common shareholders"); United Technologies Corporation (March 1, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company's charter and bylaws that call for "a greater than simple majority vote," where the Staff noted that the company "will provide shareholders at its 2019 annual meeting with an opportunity to approve an amendment to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company's governing documents"); AbbVie Inc. (February 27, 2019) (in which the Staff concurred in exclusion of all voting requirements that calls for a greater than simple majority vote," where the Staff noted that the company "will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation

which, if approved, will eliminate the supermajority voting provisions in the Company’s governing documents”); Cadence Design Systems, Inc. (February 27, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company’s charter and bylaws that call for “a greater than simple majority vote,” where the Staff noted that the company “will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation that, if approved, will remove all supermajority voting requirements in the Company’s governing documents that are applicable to the Company’s common stockholders”); HCA Healthcare, Inc. (February 21, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company’s charter and bylaws that call for “a greater than simple majority vote,” where the Staff noted that the company “will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company’s governing documents”); NCR Corporation (February 15, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the company’s charter and bylaws that call for “a greater than simple majority vote,” where the Staff noted that the company “will provide shareholders at its 2019 annual meeting with an opportunity to approve amendments to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the Company’s governing documents”); and Ferro Corporation (February 6, 2019) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(10) requesting the elimination of all voting requirements in the “Company’s charter and bylaws that calls for a greater than simple majority vote”).

The Staff also has consistently granted no-action requests pursuant to Rule 14a-8(i)(10) in circumstances where a company notifies the Staff that it intends to exclude a shareholder proposal on the basis that the board of directors is expected to take action that will substantially implement the proposal, and the company follows its initial submission with a supplemental notification to the Staff confirming that such action had been taken, including in the context of requests to eliminate supermajority voting requirements, as in Fortive Corporation (March 13, 2019), Invesco Ltd. (March 8, 2019), United Technologies Corporation (March 1, 2019), AbbVie Inc. (February 27, 2019), Cadence Design Systems, Inc. (February 27, 2019), NCR Corporation (February 15, 2019), State Street Corporation (March 5, 2018), The Goodyear Tire & Rubber Company (January 19, 2018), The Southern Company (February 24, 2017), OGE Energy Corp. (March 2, 2016), and The Progressive Corporation (February 18, 2016). See also Berry Plastics Group, Inc. (December 14, 2016) (proxy access); The Wendy’s Company (March 2, 2016) (proxy access); Reliance Steel & Aluminum Co. and United Continental Holdings, Inc. (February 26, 2016) (proxy access); Huntington Ingalls Industries, Inc. (February 12, 2016) (proxy access); and Spirit AeroSystems Holdings, Inc. (February 10, 2016) (majority voting for director elections

U.S. Securities and Exchange Commission
December 19, 2019
Page 7

proposal). Consistent with this precedent, and as previously noted, the Company will notify the Staff once formal action has been taken by the Board to adopt the Charter Amendments and the Company Proposal for which the Company will be seeking shareholder approval.

As described above, the Charter Amendments would eliminate all supermajority voting provisions that apply to the Company's common stock. The Shareholder Proposal requests that the "board take each step necessary so that each voting requirement in [the company's] 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." However, the Shareholder Proposal's supporting statement makes clear that the primary focus and essential objective is the removal of supermajority voting provisions. The Charter Amendments would replace all voting requirements in the Charter that call for a supermajority vote applicable to the Company's common stock with a lower majority voting standard. While the Company will retain its existing Charter and bylaw provisions that require a majority of the outstanding shares or that require the affirmative vote of the holders of a majority of the total number of votes of the Company capital stock represented at the meeting and entitled to vote on such question in limited situations, provisions requiring a majority of outstanding shares have consistently been viewed as implementing similar shareholder proposals seeking to eliminate supermajority provisions and/or eliminate "a greater than simple majority vote," as demonstrated in the no-action letters cited in this letter.

The only supermajority provisions that are not addressed by the Company in the Charter Amendments are those that require more than a majority vote of holders of the Company's series of preferred shares, which provisions pertain exclusively to the rights of the preferred stockholders. We do not believe the focus of the Shareholder Proposal is preferred shares, and retaining these provisions would not prevent the Company's contemplated changes from satisfying the essential objective of the Shareholder Proposal. Further, the Staff has on a number of occasions concurred in exclusion under Rule 14a-8(i)(10) of proposals similar to the Shareholder Proposal where companies have eliminated supermajority voting provisions applicable to votes of the companies' common shares but have retained supermajority voting provisions related to holders of the company's preferred shares. See, e.g., Fortive Corporation (March 13, 2019); Invesco Ltd. (March 8, 2019); Cadence Design Systems, Inc. (February 27, 2019); State Street Corporation (March 5, 2018); The Goodyear Tire & Rubber Company (January 19, 2018); Eli Lilly and Company (January 8, 2018); Korn/Ferry International (July 6, 2017); and The Progressive Corporation (February 18, 2016). See also Exxon Mobil (March 21, 2011) (in which the Staff concurred in exclusion under Rule 14a-8(i)(10) of a proposal

U.S. Securities and Exchange Commission
December 19, 2019
Page 8

requesting that “each shareholder voting requirement impacting [the] company, that calls for a greater than simple majority vote, be changed to a majority of the votes cast for and against” standard where the company’s charter and bylaws contained no supermajority voting requirement, except for a two-thirds voting requirement for preferred shares to amend the company’s charter).

Consistent with the line of precedent cited above, the Company believes that it will have substantially implemented the Shareholder Proposal before it files its Proxy Materials. In this regard, the Charter Amendments compare favorably with the guidelines of the Shareholder Proposal and more than satisfy its essential objective notwithstanding that the Charter Amendments do not precisely track the Shareholder Proposal’s terms. Because the Charter Amendments require shareholder approval, once the Board approves the Company Proposal, and includes the Company Proposal in the Proxy Materials for shareholder consideration, the Board will have taken all steps necessary and within its power and will have substantially implemented the Shareholder Proposal. For all of these reasons, the Company believes the Shareholder Proposal may be excluded under Rule 14a-8(i)(10).

The Shareholder Proposal May Be Excluded Pursuant to Rule 14a-8(i)(3) Because It Is Materially False and Misleading in Violation of Rule 14a-9

Rule 14a-8(i)(3) permits a company to exclude all or portions of a shareholder proposal “[i]f the proposal or supporting statement is contrary to any of the Commission’s proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials.” Specifically, Rule 14a-9 provides that no solicitation may be made by means of any proxy materials “containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.” The Commission has determined that a proposal may be excluded pursuant to Rule 14a-8(i)(3) where “neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires” and where “the company demonstrates objectively that a factual statement is materially false or misleading.” Staff Legal Bulletin No. 14B (September 15, 2004). The Staff also has noted that a proposal may be materially misleading as vague and indefinite when the “meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations” such that “any action ultimately taken by the company upon implementation [of the proposal] could

U.S. Securities and Exchange Commission
December 19, 2019
Page 9

be significantly different from the actions envisioned by shareholders voting on the proposal.” See *Fuqua Industries, Inc.* (March 12, 1991).

The Staff has previously concurred in the exclusion of shareholder proposals similar to the Shareholder Proposal pursuant to Rule 14a-8(i)(3) in cases where the proposals contained statements that were “materially false or misleading.” See, e.g., *Ferro Corporation* (March 17, 2015) (in which the Staff concurred in exclusion under Rule 14a-8(i)(3) of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which suggested that the stockholders would have increased rights if the Delaware law governed the company instead of Ohio law); *General Electric Company* (January 6, 2009) (in which the Staff concurred in exclusion under Rule 14a-8(i)(3) of a proposal regarding director service on board committees as false and misleading where the proposal repeatedly referred to “withheld” votes and incorrectly implied that the company offered shareholders the ability to withhold votes in elections of directors); *Johnson & Johnson* (January 31, 2007) (in which the Staff concurred in exclusion of a proposal under Rule 14a-8(i)(3) as materially false or misleading where the proposal involved an advisory vote to approve the company’s compensation committee report but contained misleading implications about the contents of the report in light of SEC disclosure requirements).

As in *Ferro Corporation*, *General Electric Company*, and *Johnson & Johnson*, the Shareholder Proposal contains statements that are materially false and misleading to shareholders and which concern the fundamental subject of the Shareholder Proposal – the Company’s supermajority voting requirements. Notably, the Shareholder Proposal states that “a 1%-minority can frustrate the will of our 79%-shareholder majority.” This is false. Holders of 1% of the Company’s shares do not have any such “power” to block an action otherwise approved by the Company’s Shareholders. Saying that “[c]urrently a 1%-minority can frustrate the will . . .” of the Company’s other shareholders implies that approving the Shareholder Proposal will change this result. Not only is such an implication incorrect, the Company’s shareholders have no such “power” in the first instance. In fact, there exists no action that the holders of 1% of the Company’s outstanding shares could cause the Company to take or prevent the Company from taking. Only if the Company had a more-than 99% supermajority voting requirement would this assertion be accurate, and the Company has no such voting requirement. To suggest that a “1%- minority” can frustrate the will of the Company’s other shareholders is materially false and misleading. As a result of these misrepresentations, which go to the heart of what shareholders would be asked to vote on, the Shareholder Proposal is fundamentally defective.

Further, the Shareholder Proposal contains statements that are materially false and misleading regarding the votes cast at the 2019 Annual Meeting. The Shareholder Proposal purports that the

U.S. Securities and Exchange Commission
December 19, 2019
Page 10

“proposal topic also received overwhelming 99%-support at the 2019 Fortive annual meeting.” This is false and misleading. The proposal topic received less than the requisite 80% vote of the outstanding shares required to pass at the 2019 Annual Meeting. The Shareholder Proposal implies that the topic received support from all but 1% of the shareholders, furthering the misrepresentation of the “power” of the 1% minority shareholder. The Shareholder Proposal also states that “2 directors standing for election in 2019 were each rejected by more than 8-times the negative votes received by one of our other directors at the same meeting. The directors with the poor 2019 showing included Alan Spoon, Fortive Chairman, and Mitchell Rales.” The Shareholder Proposal blatantly omits the fact that both Alan Spoon and Mitchell Rales received positive “for” votes almost more than ten times their respective “against” votes at the 2019 annual meeting of shareholders.¹ The votes cast “for” overwhelmingly elected the directors singled out in the Shareholder Proposal. Without context around the total votes cast in favor of Alan Spoon and Mitchell Rales, the Shareholder Proposal misleadingly suggests the votes for these directors was positive by only a slim margin. Accordingly, the Company believes that the Shareholder Proposal may properly be excluded under Rule 14a- 8(i)(3) as materially false and misleading in violation of Rule 14a-9.

In addition, the Staff has routinely concurred in the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(3) in instances where the proposal is “vague and indefinite” and fails to define key terms or is subject to materially differing interpretations such that neither the shareholders nor the company would be able to determine with reasonable certainty exactly what the proposal requires. See, e.g., The Boeing Company (January 28, 2011, recon. granted March 2, 2011), General Electric Company (February 10, 2011), Motorola, Inc. (January 12, 2011) (in each of which the Staff concurred in exclusion of a proposal that did not explain the meaning of “executive pay rights,” notwithstanding that the companies had numerous compensation programs, therefore, the proposal was subject to materially different interpretations); Verizon Communications Inc. (February 21, 2008) (in which the Staff concurred in exclusion of a proposal where the proposal failed to define the terms “Industry Peer group” and “relevant time period”); Berkshire Hathaway, Inc. (March 2, 2007) (in which the Staff concurred in exclusion of a proposal prohibiting the company from investing in securities of any foreign corporation that engages in activities prohibited for U.S. corporations by Executive Order); Prudential Financial, Inc. (February 16, 2007) (in which the Staff concurred in exclusion of a proposal addressing “management controlled programs” and “senior management incentive compensation programs”); and Woodward Governor Co. (November 26, 2003) (in which the Staff concurred in exclusion of a proposal where the proposal involved executive compensation and was unclear as to which executives were covered).

¹ See Fortive Corporation Form 8-K as filed June 6, 2019.

In Staff Legal Bulletin 14G (October 16, 2012), the Staff explained its approach in determining whether a proposal that contains a reference to an external standard is excludable for being vague and misleading, specifically in the context of when a proposal references a website. Specifically, the Staff stated that it considers “only the information contained in the proposal and supporting statement and determine[s] whether, based on that information, shareholders and the company can determine what actions the proposal seeks.” Further, “[i]f a proposal or supporting statement refers to a website that provides information necessary for shareholders and the company to understand with reasonable certainty exactly what actions or measures the proposal requires, and such information is not also contained in the proposal or in the supporting statement, then we believe the proposal would raise concerns under Rule 14a-9 and would be subject to exclusion under Rule 14a-8(i)(3) as vague and indefinite.” In this regard, the Staff historically has concurred in the exclusion of shareholder proposals pursuant to Rule 14a-8(i)(3) that rely on an external standard for a central element of the proposal without sufficiently describing the substantive elements of such external standard. See, e.g., Bank of America Corporation (March 6, 2014) (in which the Staff concurred in exclusion of a proposal that requested the board to appoint a committee to develop a plan for divesting all “non-core banking business segments,” which the proposal defined as “operations other than what the corporation calls Consumer & Business Banking, Consumer Real Estate Services, and Global Banking (in Note 26 of the 2012 annual report, p. 271-272)”; Chevron Corporation (March 15, 2013) (in which the Staff concurred in exclusion of a proposal requesting that the board adopt a policy that the board’s chairman be “an independent director according to the definition set forth in the New York Stock Exchange listing standards” but failed to describe or explain the substantive provisions of the standard); Dell Inc. (March 30, 2012) (in which the Staff concurred in exclusion of a proposal to include certain shareholder-named director nominees in company proxy statements, including any nominee named by “shareowners of whom one hundred or more satisfy SEC Rule 14a-8(b) eligibility requirements”); Exxon Mobil Corporation (March 21, 2011) (in which the Staff concurred in exclusion of a proposal requesting “a report . . . on the community and environmental impact of [the company’s] logistics decisions, using guidelines from the Global Reporting Initiative” where the proposal did not “sufficiently explain the ‘guidelines from the Global Reporting Initiative’”); AT&T Inc. (February 16, 2010, recon. denied March 2, 2010) (in which the Staff concurred in exclusion of a proposal that sought a report on, among other things, “grassroots lobbying communications as defined in 26 C.F.R. § 56.4911-2”); and The Boeing Company (February 5, 2010) (in which the Staff concurred in exclusion of a proposal where the proposal requested the establishment of a board committee that “will follow the Universal Declaration of Human Rights,” without describing the substantive provisions of the standard to be applied).

U.S. Securities and Exchange Commission
December 19, 2019
Page 12

Here, the Shareholder Proposal requires that the Board “take each step necessary so that each voting requirement in [the Company’s] charter and bylaws (that is explicit or implicit due to default to state law²) that calls for a greater than simple majority vote be eliminated” and replaced by a simple majority requirement. Similar to the proposals at issue in the above-cited letters, the Shareholder Proposal fails to anchor a fundamental provision of the Shareholder Proposal – simple majority voting standards – by explaining what is meant by the Shareholder Proposal’s passive references to “state law” and “applicable law.” Because the goal of the Shareholder Proposal is to change the Company’s voting requirements, the Shareholder Proposal’s perfunctory references to “state law” and “applicable law” create a fatal flaw in the proposal by introducing significant vagueness and ambiguity into critical elements of the Shareholder Proposal. Shareholders considering the Shareholder Proposal may not know which “state law” or “applicable law” the Shareholder Proposal intends to apply to the Company’s organizational documents. No specific state or law is defined or referenced in the Shareholder Proposal, and multiple states and laws could be inferred. Given the complexity of and variations in state law, the Shareholder Proposal simply does not provide sufficient information for shareholders and the Company to understand with reasonable certainty exactly what measures or actions the Shareholder Proposal requires. Without context around the operative standard on which the Company’s shareholders would be asked to vote, the Shareholder Proposal would render the Company and its shareholders unable to know exactly what substantive changes would be required to implement the Shareholder Proposal.

As a result, the Shareholder Proposal may be open to more than one interpretation and is impermissibly vague and indefinite such that neither shareholders voting on the Shareholder Proposal nor the Company in implementing the Shareholder Proposal, if adopted, may be able to determine with reasonable certainty what actions would be taken under the Shareholder Proposal. Accordingly, the Company believes that the Shareholder Proposal may properly be excluded under Rule 14a-8(i)(3) as impermissibly vague and indefinite so as to be materially misleading in violation of Rule 14a-9.

Conclusion

Based on the foregoing, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Shareholder Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(10), on the basis that the Company has substantially implemented the Shareholder

² While the Proposal does not identify which state’s law it refers to, and it is not at all clear that the Proponent has any particular state in mind, solely for the purposes of this letter we are assuming the reference is to Delaware law, since the Company is incorporated in Delaware.

U.S. Securities and Exchange Commission
December 19, 2019
Page 13

Proposal, or, alternatively, pursuant to Rule 14a-8(i)(3), on the basis that the Shareholder Proposal is materially false and misleading in violation of Rule 14a-9.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Shareholder Proposal from its Proxy Materials, please do not hesitate to contact me at lillian.brown@wilmerhale.com or (202) 663-6743, or Daniel B. Kim, Vice President, Associate General Counsel and Secretary, Fortive Corporation at daniel.kim@fortive.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Very truly yours,



Lillian Brown

Enclosures

EXHIBIT A

JOHN CHEVEDDEN

Mr. Daniel B. Kim
Fortive Corporation (FTV)
6920 Seaway Boulevard
Everett, WA 98203
PH: 425-446-5000

Dear Mr. Kim,

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

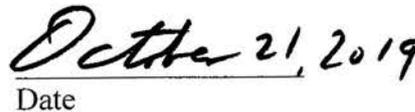
This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the 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. This proposal is intended to be implement as soon as possible.

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

[FTV: Rule 14a-8 Proposal, October 21, 2019]
[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.

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. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. The proponents of these proposals included Ray T. Chevedden and William Steiner. This proposal topic also received overwhelming 99%-support at the 2019 Fortive annual meeting.

Currently a 1%-minority can frustrate the will of our 79%-shareholder majority in an election with 80% of shares casting ballots. In other words a 1%-minority could have the power to prevent shareholders from improving the governance of our company. This can be particularly important during periods of management underperformance and/or an economic downturn. Currently the role of shareholders is downsized because management can simply say out-to-lunch in response to an overwhelming 79%-vote of shareholders.

This proposal will pave the way for adoption of annual election of each director in order to address any complacency by our directors as our stock was flat in the year leading up to the submittal of this 2020 proposal. Annual election of each director is particularly important when 2 directors standing for election in 2019 were each rejected by more than 8-times the negative votes received by one of our other directors at the same meeting. The directors with the poor 2019 showing included Alan Spoon, Fortive Chairman, and Mitchell Rales.

Please vote yes:

Simple Majority Vote – Proposal [4]

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

John Chevedden,
proposal.

sponsors this

Notes:

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

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

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

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

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

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



October 23, 2019

VIA EMAIL

John Chevedden

Re: Notice of Deficiency Relating to Shareholder Proposal

Dear Mr. Chevedden:

On October 21, 2019, Fortive Corporation (the “Company”), received the shareholder proposal submitted by you (the “Proponent”) for consideration at the Company’s 2020 Annual Meeting (the “Submission”). Based on the date of electronic transmission of the Submission, the Company has determined that the date of submission was October 21, 2019 (the “Submission Date”).

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), provides that a shareholder proponent must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company’s shares entitled to vote on the proposal for at least one year as of the Submission Date. The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy this requirement. Therefore, under Rule 14a-8(b), the Proponent must prove its eligibility by submitting either:

- A written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that, as of the Submission Date, the Proponent continuously held the requisite number of Company shares for at least one year. As addressed by the SEC staff in Staff Legal Bulletin 14G, please note that if the Proponent’s shares are held by a bank, broker or other securities intermediary that is a Depository Trust Company (“DTC”) participant or an affiliate thereof, proof of ownership from either that DTC participant or its affiliate will satisfy this requirement. Alternatively, if the Proponent’s shares are held by a bank, broker or other securities intermediary that is not a DTC participant or an affiliate of a DTC participant, proof of ownership must be provided by both (1) the bank, broker or other securities intermediary and (2) the DTC participant (or an affiliate thereof) that can verify the holdings of the bank, broker or other securities intermediary. You can confirm whether a particular bank, broker or other securities intermediary is a DTC participant by checking DTC’s participant list, which is available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. The Proponent should be able to determine who the DTC participant is by asking the Proponent’s bank, broker or other securities intermediary; or
- If the Proponent has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting its ownership

of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite number of Company shares for the one-year period.

To date, the Company has not received proof that the Proponent has satisfied Rule 14a-8's ownership requirements as of the Submission Date. To remedy this defect, the Proponent must submit sufficient proof of its ownership of the requisite number of Company shares during the time period of one year preceding and including the Submission Date.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to the undersigned, Daniel B. Kim, at daniel.kim@fortive.com. The failure to correct the deficiencies within this timeframe will provide the Company with a basis to exclude the proposal contained in the Submission from the Company's proxy materials for the 2020 Annual Meeting.

If you have any questions with respect to the foregoing, please contact me at (425) 446-5000. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletins 14F and 14G.

Sincerely,



Daniel B. Kim
Vice President, Associate General Counsel
and Secretary

Enclosures – Exchange Act Rule 14a-8
Staff Legal Bulletins 14F and 14G



Ameritrade

11/01/2019

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 July 1, 2018.

Netflix, Inc (NFLX) 20 shares
Fortive Corp (FTV) 75 shares
Dominion Resources Inc (D) 100 shares
Ecolab Inc (ECL) 50 shares
Hewlett Packard Enterprise Company (HPE) 150 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 800 600 0000. 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.

TD Ameritrade, Inc., member FINRA/SIPC (www.finra.org, www.sipc.org). TD Ameritrade is a trademark jointly owned by TD Ameritrade IP Company, Inc. and The Toronto-Dominion Bank. © 2015 TD Ameritrade IP Company, Inc. All rights reserved. Used with permission.