



DIVISION OF
CORPORATION FINANCE

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

April 11, 2022

Marc S. Gerber
Skadden, Arps, Slate, Meagher & Flom LLP

Re: Fortive Corporation (the "Company")
Incoming letter dated December 28, 2021

Dear Mr. Gerber:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by John Chevedden for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board take the necessary steps 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 replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In this regard, we note that if shareholders approve the Charter Amendments at the Company's 2022 annual meeting, future shareholder-approved amendments to the Company's bylaws would require the approval of a majority of the outstanding shares of common stock, rather than a majority of votes cast, as the Proposal requests.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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BY EMAIL (shareholderproposals@sec.gov)

December 28, 2021

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 – 2022 Annual Meeting
Omission of Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Fortive Corporation, a Delaware corporation (“Fortive”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Fortive’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent”), from the proxy materials to be distributed by Fortive in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of Fortive’s intent to omit the Proposal from the 2022 proxy materials.

Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to Fortive.

I. The Proposal

The text of the resolution contained in the Proposal is set forth below:

RESOLVED, Shareholders request that our board take the necessary steps 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 replaced by a requirement for a majority of the votes cast for and against such 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 any existing supermajority vote requirement that results from default to state law and can be subject to elimination.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Fortive's view that it may exclude the Proposal from the 2022 proxy materials pursuant to Rule 14a-8(i)(10) upon confirmation that Fortive's Board of Directors (the "Board") has approved the resolutions, described below, approving and submitting for shareholder approval at the 2022 annual meeting of shareholders the Charter Amendments (as defined below) that will substantially implement the Proposal.

III. Background

A. The Proposal

Fortive received an initial version of the Proposal on November 17, 2021, via email from the Proponent accompanied by a cover letter, the receipt of which Fortive acknowledged on November 18, 2021. On November 23, 2021, Fortive received a copy of a letter from TD Ameritrade, Inc., dated November 23, 2021, via email verifying the Proponent's stock ownership, the receipt of which Fortive acknowledged on November 24, 2021. On December 27, 2021, Fortive received a revised version of the Proposal via email from the Proponent, the receipt of which Fortive acknowledged on December 27, 2021. Copies of the initial Proposal, cover letter, revised Proposal and related correspondence are attached hereto as Exhibit A.

B. The Anticipated Charter Amendments

Fortive's Restated Certificate of Incorporation (the "Certificate of Incorporation") contains two provisions calling for a supermajority vote of shareholders. Fortive's Amended and Restated Bylaws do not include any supermajority vote provisions.

The first supermajority vote provision is contained in the final sentence of Article IX, Section 9.01 of the Certificate of Incorporation, which currently provides that "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" (the "Charter Amendment Provision").

The second is contained in Article IX, Section 9.02 of the Certificate of Incorporation, which currently provides that "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, repeal or adopt any provision of the Bylaws of the Corporation" (the "Bylaw Amendment Provision").

Based upon discussion by the Nominating and Governance Committee and by the Board at meetings in November 2021, the Board is expected, at a Board meeting in January 2022 (the "January Board Meeting"), to consider resolutions (i) approving amendments to the Certificate of Incorporation to eliminate the Charter Amendment Provision and to amend the Bylaw Amendment Provision (the "Charter Amendments"), declaring the Charter Amendments advisable and in the best interest of Fortive and its shareholders, directing that the Charter Amendments be submitted to shareholders for adoption at the 2022 annual meeting and recommending that shareholders vote to adopt the Charter Amendments. In the event that the Board adopts the resolutions described above, and the shareholders at the 2022 annual meeting approve the Charter Amendments, any future amendments to the Certificate of Incorporation would require the approval of a majority of the outstanding shares of common stock pursuant to Section 242 of the Delaware General Corporation Law (the "DGCL") and any future amendments to the Bylaws would require the approval of a majority of the outstanding shares of common stock. The text of the Charter Amendments, marked to show proposed revisions, will be included in the supplemental letter, as described below, notifying the Staff of the Board's action on this matter shortly after the January Board Meeting.

C. Additional Background

We note that the Staff has twice before concurred with Fortive's exclusion under Rule 14a-8(i)(10) of a proposal substantially similar to the Proposal when the Board adopted resolutions approving identical amendments to Fortive's Certificate of Incorporation, declared such amendments to the Certificate of Incorporation advisable and in the best interest of Fortive and its shareholders, directed that such amendments to the Certificate of Incorporation be submitted to shareholders for adoption at the upcoming annual meeting and recommended that shareholders vote to adopt these amendments to the Certificate of Incorporation. *See Fortive Corp.* (Feb. 12, 2020)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where Fortive planned to provide shareholders at the next annual meeting with an opportunity to approve amendments to its certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in Fortive's governing documents); *Fortive Corp.* (Mar. 13, 2019) (same). In each case, the amendments were submitted for adoption by the shareholders and failed to achieve the requisite level of shareholder support.

IV. The Proposal May be Excluded Pursuant to Rule 14a-8(i)(10) Because Fortive Will Have Substantially Implemented the Proposal.

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

Applying this standard, the Staff has consistently permitted the exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company's policies, practices and procedures or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., JPMorgan Chase & Co.* (Mar. 9, 2021)*; *AbbVie Inc.* (Mar. 2, 2021)*; *Devon Energy Corp.* (Apr. 1, 2020)*; *Johnson & Johnson* (Jan. 31, 2020)*; *Pfizer Inc.* (Jan. 31, 2020)*; *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015).

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. In *Wal-Mart Stores, Inc.* (Mar. 30, 2010), for example, the proposal requested that the company adopt six principles for national and international action to stop global warming. The company argued that its Global Sustainability Report, available on the company's website, substantially implemented the proposal. Although the report referred to by the company set forth only four principles that covered most, but not all, of the issues raised by the proposal, the Staff concluded that the company had substantially implemented the proposal. See, e.g., *Masco Corp.* (Mar. 29, 1999) (permitting exclusion under Rule 14a-8(i)(10) where the company adopted a version of the proposal with slight modifications and clarification as to one of its terms); see also, e.g., *The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *Oshkosh Corp.* (Nov. 4, 2016) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting six changes to the company's proxy access bylaw, where the company amended its proxy access bylaw to implement three of six requested changes); *MGM Resorts International* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Exelon Corp.* (Feb. 26, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report disclosing policies and procedures for political contributions and monetary and non-monetary political contributions where the company had adopted corporate political contributions guidelines).

The text of the Proposal makes clear that the Proposal's essential objective is to remove the supermajority vote requirements contained in the Certificate of Incorporation. Applying the principles described above, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) of proposals, substantially similar to the Proposal, seeking to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. See, e.g., *Flowserve Corp.* (Mar. 30, 2021)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company's board of directors approved amendments to the company's certificate of incorporation eliminating the supermajority voting provisions and planned to submit the amendments to shareholders for approval at the company's next annual meeting); *AbbVie Inc.* (Mar. 2, 2021)* (same); *Fortive Corp.* (Feb. 12, 2020)* (same); *Fortive Corp.* (Mar. 13, 2019) (same); *AbbVie Inc.* (Feb. 27, 2019)

(permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the [c]ompany’s governing documents”); *PepsiCo, Inc.* (Feb. 14, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, which, if approved, will eliminate the supermajority voting provisions in the [c]ompany’s certificate of incorporation”); *AbbVie Inc.* (Feb. 16, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [c]ompany’s certificate of incorporation and bylaws”); *Dover Corp.* (Dec. 15, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, which, if approved, will eliminate the only two supermajority voting provisions in the [c]ompany’s governing documents”); *QUALCOMM Inc.* (Dec. 8, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation that, if approved, will remove all supermajority voting requirements in the [c]ompany’s certificate of incorporation and bylaws”); *Korn/Ferry Int’l* (July 6, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company planned to provide shareholders at the next annual meeting “with an opportunity to approve amendments to [the company’s] certificate of incorporation, approval of which will result in the replacement of each of the supermajority voting requirements in the certificate of incorporation and bylaws that are applicable to [the company’s] common stock with a majority vote standard”).

The Staff also has consistently permitted exclusion under Rule 14a-8(i)(10) of a proposal seeking to eliminate supermajority vote provisions where the amendments to the company’s governing documents resulted in replacing each supermajority vote requirement with a majority of the outstanding shares vote requirement. *See, e.g., AbbVie Inc.* (Mar. 2, 2021)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company’s certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *Fortive Corp.* (Feb. 12, 2020)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to Fortive’s certificate of incorporation would result in a majority of the outstanding shares vote requirement); *Fortive Corp.* (Mar. 13, 2019) (same); *AbbVie Inc.* (Feb. 27, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company’s certificate of incorporation would result in a majority of the outstanding

shares of common stock vote requirement pursuant to the DGCL); *AbbVie Inc.* (Feb. 16, 2018) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company's certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *Dover Corp.* (Dec. 15, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company's certificate of incorporation would result in a majority of the outstanding shares of common stock vote requirement pursuant to the DGCL); *QUALCOMM Inc.* (Dec. 8, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendments to the company's certificate of incorporation and bylaws would result in a majority of the outstanding shares vote requirement pursuant to the DGCL); *Korn/Ferry Int'l* (July 6, 2017) (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the amendment to the company's certificate of incorporation would require a majority vote of the voting power of the outstanding shares).

As in the foregoing letters, the anticipated Charter Amendments substantially implement the Proposal. Specifically, in the event that the Board adopts the resolutions described above, Fortive's shareholders will be asked at Fortive's 2022 annual meeting to vote to adopt the Charter Amendments that would, if approved, eliminate the only supermajority vote requirements in the Certificate of Incorporation. As a result, in the event the Board adopts the resolutions described above, the Company will have addressed the essential objective of the Proposal.

We submit this no-action request now to address the timing requirements of Rule 14a-8(j). We will submit a supplemental letter notifying the Staff of the Board's action on this matter, which will include a copy of the amendments approved by the Board, shortly after the January Board Meeting. The Staff consistently has permitted exclusion under Rule 14a-8(i)(10) where a company has notified the Staff that it intends to recommend that its board of directors take certain action that will substantially implement the proposal and then supplements its request for no-action relief by notifying the Staff after that action has been taken by the board of directors. *See, e.g., Flowserve Corp.* (Mar. 30, 2021)*; *AbbVie Inc.* (Mar. 2, 2021)*; *Fortive Corp.* (Feb. 12, 2020)*; *Fortive Corp.* (Mar. 13, 2019); *AbbVie Inc.* (Feb. 27, 2019); *AbbVie Inc.* (Feb. 16, 2018); *The Southern Co.* (Feb. 24, 2017); *Visa Inc.* (Nov. 14, 2014); *Hewlett-Packard Co.* (Dec. 19, 2013); *Starbucks Corp.* (Nov. 27, 2012) (each permitting exclusion of a proposal under Rule 14a-8(i)(10) where the board of directors was expected to take action that would substantially implement the proposal, and the company supplementally notified the Staff of the board action).

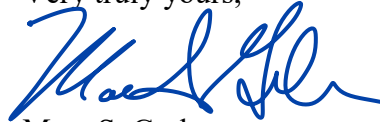
Accordingly, Fortive believes that once the Board takes the actions described above, the Proposal will have been substantially implemented and may be excluded under Rule 14a-8(i)(10).

V. Conclusion

Based upon the foregoing analysis, Fortive respectfully requests that the Staff concur that it will take no action if Fortive excludes the Proposal from its 2022 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Fortive's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Daniel B. Kim
Vice President, Associate General Counsel and Secretary
Fortive Corporation

John Chevedden

EXHIBIT A

(see attached)

Mr. Daniel B. Kim
Corporate Secretary
Fortive Corporation (FTV)
6920 Seaway Boulevard
Everett, WA 98203
PH: [REDACTED]

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 next annual shareholder meeting.

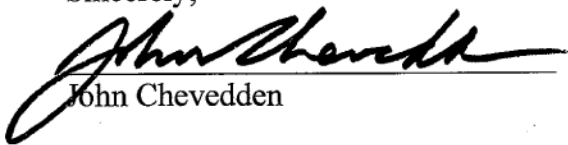
I intend to continue to hold through the date of the Company's 2022 Annual Meeting of Stockholders the requisite amount of Company shares used to satisfy the applicable ownership requirement.

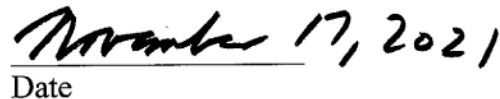
This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,


John Chevedden


Date

[FTV: Rule 14a-8 Proposal, November 17, 2021]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

RESOLVED, Shareholders request that our board take the necessary steps 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 replaced by a requirement for a majority of the votes cast for and against such 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 any existing supermajority vote requirement that results from default to state law and can be subject to elimination.

The main purpose of this proposal is to motivate management to take the necessary steps to obtain shareholder approval of this proposal. This proposal cannot achieve this purpose unless this very proposal appears on the annual meeting ballot.

This proposal did not appear as a shareholder proposal on the 2019 and 2020 Fortive annual meeting ballot and Fortive management was clearly not motivated to take the steps necessary for binding approval of this proposal topic.

This proposal topic won greater than 76% support at both the Fortive 2019 and 2020 annual meetings. However both 76% votes failed because 80% approval was required.

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 proposals supported by most shareholders 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 more shareholders had access to independent proxy voting advice.

Church & Dwight shareholders gave 99% support to a 2020 proposal on this same topic. This proposal topic also won 99%-support at the 2021 ConocoPhillips annual meeting.

Currently Fortive has 80% vote requirements. This means that 90%-votera from the shares that vote at the Fortinet annual meeting are required to meet the 80% voting requirements – an almost impossible task.

This is not the only shortcoming in Fortive corporate governance. Management pay was rejected by 12% of shares when a 5% rejection is the norm.

Please vote yes:

Simple Majority Vote – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

Notes:

“Proposal 4” stands in for the final proposal number that management will assign.

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.

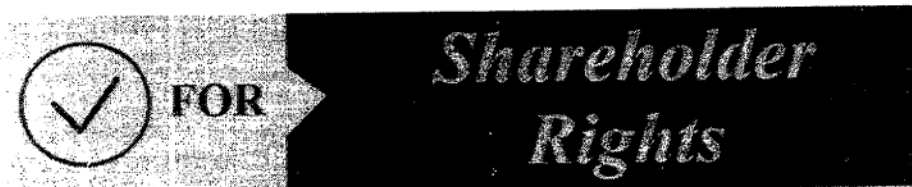
See also: Sun Microsystems, Inc. (July 21, 2005).

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

The color version of the below graphic is to be published immediately after the bold title line of the proposal.

Will consider withdrawal of the graphic if management commits to a fair presentation of the proposal which includes:

- No management graphic in connection with the rule 14a-8 proposals in the proxy or ballot.
- No proxy or ballot text suggesting that the proposal will be moot due to lack of presentation.
- No ballot electioneering text repeating the negative management recommendation.
- Management will give me the opportunity to correct any typographical errors.
- Management will give me advance notice if it does a special solicitation that mentions this proposal.



[FTV: Rule 14a-8 Proposal, November 17, 2021, Revised December 27, 2021]

[This line and any line above it – *Not* for publication.]

Proposal 4 – Simple Majority Vote

RESOLVED, Shareholders request that our board take the necessary steps 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 replaced by a requirement for a majority of the votes cast for and against such 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 any existing supermajority vote requirement that results from default to state law and can be subject to elimination.

The main purpose of this proposal is to motivate management to take the necessary steps to obtain shareholder approval of this proposal. Management will have less motivation to take the necessary steps to obtain shareholder approval of this proposal topic if this proposal does not appear in the 2022 annual meeting proxy.

This proposal did not appear as a shareholder proposal on the 2019 and 2020 Fortive annual meeting ballot and Fortive management was clearly not motivated to take the steps necessary for binding approval of this proposal topic.

This proposal topic won greater than 76% support at both the Fortive 2019 and 2020 annual meetings. However both 76% votes failed because 80% approval was required.

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 proposals supported by most shareholders 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 more shareholders had access to independent proxy voting advice.

Church & Dwight shareholders gave 99% support to a 2020 proposal on this same topic. This proposal topic also won 99%-support at the 2021 ConocoPhillips annual meeting.

Currently Fortive has 80% vote requirements. This means that a 90%-vote from the shares that vote at the Fortive annual meeting are required to meet the 80% voting requirements – an almost impossible task.

This is not the only shortcoming in Fortive corporate governance. Management pay was rejected by 12% of shares when a 5% rejection is the norm.

Please vote yes:

Simple Majority Vote – Proposal 4

[The line above – *Is* for publication. Please assign the correct proposal number in 2 places.]

JOHN CHEVEDDEN

December 28, 2021

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 a counterpoint to the December 28, 2021 no-action request that was filed 40-days early.

It is time that management failure to take the steps necessary to adopt a proposal be counted as "Substantial Implementation."

This no action request is a cookie cutter repeat of the management failure to adopt this proposal topic in 2019 and 2020. It is like management deliberately does not want this proposal topic to be approved by shareholders. In both years shareholders gave more than 76% approval to this proposal topic and 80% approval was needed.

It would have been so easy for management to add a note in favor of adopting this proposal topic to its 2020 supplemental proxy announcing a virtual meeting format.

Management is now proposing to publish a third tombstone file and forget proposal on this topic and wants full credit.

It is so slanted for management. Meanwhile if a shareholder proposal fails to obtain a 25% vote in one of 3 years that proposal topic is outlawed at the respective company for 5-years.

Sincerely,


John Chevedden

cc: Daniel B. Kim 

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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MARC.GERBER@SKADDEN.COM

BY EMAIL (shareholderproposals@sec.gov)

January 26, 2022

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 – 2022 Annual Meeting
Supplement to Letter dated December 28, 2021 Relating to
Shareholder Proposal of John Chevedden

Ladies and Gentlemen:

We refer to our letter dated December 28, 2021 (the “No-Action Request”), submitted on behalf of our client, Fortive Corporation, a Delaware corporation (“Fortive”), pursuant to which we requested that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Fortive’s view that the shareholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent”) may be excluded from the proxy materials to be distributed by Fortive in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”).

In accordance with Rule 14a-8(j), a copy of this letter also is being sent to the Proponent.

The No-Action Request indicated Fortive’s view that the Proposal may be excluded from the 2022 proxy materials because Fortive’s Board of Directors (the “Board”) was expected, at its meeting in January 2022, to consider amendments to

Fortive's Certificate of Incorporation (the "Certificate of Incorporation") that would substantially implement the Proposal under Rule 14a-8(i)(10).

We submit this supplemental letter to notify the Staff that, at its meeting on January 25, 2022, the Board adopted resolutions (i) approving amendments to delete the supermajority vote provision in Article IX, Section 9.01 of the Certificate of Incorporation (the "Charter Amendment Provision") and to amend the supermajority vote provision in Article IX, Section 9.02 of the Certificate of Incorporation (the "Bylaw Amendment Provision" and, together with the Charter Amendment Provision, the "Charter Amendments"), (ii) declaring the Charter Amendments advisable and in the best interest of Fortive and its shareholders, (iii) directing that the Charter Amendments be submitted to shareholders for adoption at the 2022 annual meeting, and (iv) recommending that shareholders vote to adopt the Charter Amendments. In the event that Fortive shareholders approve the Charter Amendments at the 2022 annual meeting, any future shareholder-approved amendments to the Certificate of Incorporation would require the approval of a majority of the outstanding shares of common stock pursuant to Section 242 of the Delaware General Corporation Law (the "DGCL") and any future shareholder-approved amendments to the Bylaws would require the approval of a majority of the outstanding shares of common stock. The text of the Charter Amendments, marked to show proposed revisions, are attached hereto as Exhibit A.

As discussed in the No-Action Request, Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. Applying the principles described in the No-Action Request, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals, substantially similar to the Proposal, seeking to eliminate supermajority vote provisions where the board lacked unilateral authority to adopt the amendments (which is the case here), but substantially implemented the proposal by approving the proposed amendments and directing that they be submitted for shareholder approval at the next annual meeting. *See, e.g., Flowserve Corp.* (Mar. 30, 2021)* (permitting exclusion under Rule 14a-8(i)(10) of a proposal where the company's board of directors approved amendments to the company's certificate of incorporation eliminating the supermajority voting provisions and planned to submit the amendments to shareholders for approval at the company's next annual meeting); *AbbVie Inc.* (Mar. 2, 2021)* (same); *Fortive Corp.* (Feb. 12, 2020)* (same); *Fortive Corp.* (Mar. 13, 2019) (same).

As in the letters referenced above and in the No-Action Request, the Charter Amendments substantially implement the Proposal. Specifically, Fortive's shareholders will be asked at Fortive's 2022 annual meeting to vote to adopt the Charter Amendments that would, if approved, eliminate the supermajority vote requirements

* Citations marked with an asterisk indicate Staff decisions issued without a letter.

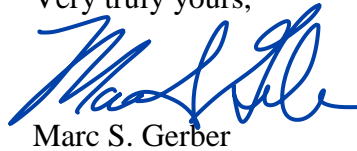
contained in the Certificate of Incorporation. As noted in the No-Action Request, Fortive's Amended and Restated Bylaws do not include any supermajority vote provisions. Accordingly, Fortive has addressed the essential objective of the Proposal.

Accordingly, consistent with the letters cited above and in the No-Action Request, Fortive believes that the Proposal has been substantially implemented and may be excluded under Rule 14a-8(i)(10).

Based upon the foregoing analysis, Fortive respectfully requests that the Staff concur that it will take no action if Fortive excludes the Proposal from its 2022 proxy materials.

Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of Fortive's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7233.

Very truly yours,



Marc S. Gerber

Enclosures

cc: Daniel B. Kim
Vice President, Associate General Counsel and Secretary
Fortive Corporation

John Chevedden

EXHIBIT A

(see attached)

The Charter Amendment Provision

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.~~

The Bylaw Amendment Provision

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.

January 26, 2022

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 a counterpoint to the December 28, 2021 no-action request that was filed 40-days early.

Management is asking for its 3rd cookie cutter no action reprieve based on management failing to obtain the necessary vote for the same old cookie cutter management proposal to eliminate simple majority provisions. There is nothing in the no action request to offer any hope that management would not repeat another diffidently supported management proposal and consequential failed vote process and do so ad infinitum.

It appears that there is nothing to prevent management from working behind the scenes to defeat its 2022 proposal to set up a 4th failed vote in 2023. The management position is that all management needs to do is to publish a tombstone proposal in the 2022 proxy and walk away.

Management does not even need to inform shareholders in the proxy how important their vote is. To the contrary it is essential to inform shareholders how important their 2022 vote is on this topic because the 2022 management proposal on this topic is the only management ballot item that will have a risk of failure. Management is opposed to giving its 2022 proposal the slightest nudge.

Meanwhile it would have been so easy for management to add a note in favor of adopting this proposal topic to its 2020 supplemental proxy announcing a virtual meeting format.

Management violates its own precedent in citing that the Commission stated in 1976 predecessor to Rule 14a(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by management."

Under the management interpretation of the 1976 Exchange Act Release shareholders have already been forced to consider this issue 2-times after "favorable" management action. Another company is requesting similar 2022 no action relief after 5 cookie-cutter failures.

Management defies plain English by claiming its failures in 2019 and 2020 as “favorably acted upon by management” and thus forces shareholders “to consider matters” again that they have already considered 2-times since 2019.

Management provided no evidence that in 1976 the Commission had in mind that “favorably acted upon by management” meant a failed vote, especially when a successful vote was well within reach. For instance two 76%+ votes were effortlessly achieved by Fortive management in 2019 and 2020 compared to a required vote of 80%.

Plus there is no legal opinion that the same unassisted cookie cutter management proposal is the only way that the rule 14a-8 proposal can be adopted.

If this shareholder proposal is included in the 2022 proxy it will decrease the chance that shareholders will have to reconsider this proposal topic in the years ahead – thus more in unison with the spirit of the 1976 Exchange Act Release.

It is so slanted for management to be allowed to dodge this highly supported rule 14a-8 proposal topic by running a totally unassisted tombstone management proposal year after year. Meanwhile if a shareholder proposal fails to obtain a 25% vote in one of 3 years that proposal topic is outlawed at the respective company for 5-years – a 5-year penalty for shareholders.

Sincerely,



John Chevedden

cc: Daniel B. Kim

March 7, 2022

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 a counterpoint to the December 28, 2021 no-action request that was filed 40-days early.

Management is asking to be rewarded with a no action reprieve by responding in a dumb way to this rule 14a-8 proposal when there are smarter options.

Instead of working for a 3rd consecutive failure by using the same lockstep response to a rule 14a-8 proposal, management could have simply given notice of submitting to shareholders a proposal to replace its 80% supermajority vote provisions with 75% provisions.

A more moderate change would increase the likelihood of obtaining an approval vote from shareholders.

Or management could submit to shareholders a proposal that any change in its supermajority vote provisions would need 75% approval.

Management should not be rewarded for responding in a dumb way to a rule 14a-8 proposal when there are smarter options.

Management has provided no precedent that upheld "to avoid the possibility of shareholders having to consider matters which already have been acted upon by management" when the proponent has pointed out how management could draft a *more favorable* management response proposal like a proposal to replace 80% supermajority vote provisions with 75% vote provisions.

Raytheon Technologies Corporation (RTX) had a similar problem with obtaining an 80% vote threshold and committed to a 2-year process that is promising in accomplishing adoption according to the attached 2-pages from the February 28, 2022 RTX preliminary proxy: <https://www.sec.gov/Archives/edgar/data/101829/000120677422000566/rtx3925001-pre14a.htm>

RTX acted in response to a 2022 rule 14a-8 proposal similar to the rule 14a-8 proposal submitted to FTV.

Sincerely,


John Chevedden

cc: Daniel B. Kim

Proposal 4: Approve an Amendment to the Restated Certificate of Incorporation to Reduce the Voting Threshold Required to Repeal Article Ninth

What am I voting on?

The Board unanimously recommends that shareowners approve an amendment to the Company's Restated Certificate of Incorporation to reduce the voting threshold required to repeal Article Ninth, as the first step in a two-step process to eliminate the supermajority voting provisions of the Restated Certificate of Incorporation.

WHY SHOULD I VOTE FOR THIS PROPOSAL?

Background on the Current Supermajority Requirement. Article Ninth of RTX's Restated Certificate of Incorporation ("Certificate") currently requires a vote of 80% of the Company's outstanding shares to approve certain business combinations with an interested party, which is a party that owns 10% or more of the Company's outstanding common stock. The adoption of any provision inconsistent with, or that repeals or amends, Article Ninth requires the same supermajority vote, provided, however that Article Ninth may be amended by a vote of a simple majority of the Company's outstanding shares if the amendment has been previously approved by a majority of the Company's directors who are not affiliated with an interested party and were directors prior to the time that an interested party became an interested party ("Disinterested Directors").

Article Ninth is the only provision in the Company's Certificate or Bylaws requiring a supermajority vote. Article Ninth was approved by the Company's shareowners in 1983 to protect against a self-interested action by large shareowners by requiring broad shareowner consensus to make certain fundamental changes.

While such protections can be beneficial to shareowners in certain instances, the Board believes that such provisions also can limit the ability of shareowners to effectively participate in corporate governance. The Board also recognizes that currently shareowners generally oppose supermajority provisions such as the one in our Certificate. Indeed, when the Company presented a proposal to eliminate Article Ninth for shareowner approval at the 2018 and 2019 Annual Meetings, it received approximately a 99% favorable vote (from those shareowners who voted) each year; but, notwithstanding the Company's concerted efforts to increase turnout, the proposal still fell short because less than 80% of the outstanding shares voted in favor of repeal. An advisory shareowner proposal at the 2020 Annual Meeting received over a 97% favorable vote (from those shareowners who voted).

Table of Contents

PROPOSAL 4: APPROVE AN AMENDMENT TO THE RESTATED CERTIFICATE OF INCORPORATION TO REDUCE THE VOTING THRESHOLD REQUIRED TO REPEAL ARTICLE NINTH

Why We Propose to Amend the Repeal Threshold As the First Step to Eliminating the Supermajority Voting Provisions. The Board is committed to good governance practices, continuously monitoring governance issues of interest to shareowners and responding to shareowner concerns. The Governance Committee and the Board carefully considered the input from shareowners, including the broad, albeit insufficient, support that the related proposals received at the 2018 and 2019 Annual Meetings, the level of support for the advisory shareowner proposal at the 2020 Annual Meeting, and direct feedback from shareowners during the Company's shareowner outreach efforts in 2021. They also considered the advantages and disadvantages of maintaining the supermajority vote requirements in Article Ninth, including such requirement necessary to repeal Article Ninth, and the Company's prior proposals to repeal it.

Based on the foregoing, the Governance Committee considered a two-step process to repeal Article Ninth of the Restated Certificate of Incorporation and recommended to the Board that the Company proceed with the two-step process, as described in this proposal. As a result, the Board, comprised entirely of Disinterested Directors with regard to this matter, unanimously adopted a resolution on February 11, 2022 authorizing and declaring it advisable and in the best interests of the Company to amend the Certificate to reduce the approval threshold for amending or repealing Article Ninth to a simple majority vote of the outstanding shares, and recommended the submission of this amendment for shareowner approval at the 2022 Annual Meeting.

Shareowners may approve this first step amendment by a majority vote of the outstanding shares. In the event that the amendment is approved at 2022 Annual Meeting, then the voting threshold to repeal Article Ninth thereafter would be a simple majority vote of the Company's outstanding shares. The Company believes this two-step approach – amendment of Article Ninth this year followed by a proposal to repeal it next year – is more likely to result in the ultimate elimination of the supermajority voting provisions than continuing to seek approval by 80% of the outstanding shares, given historic and anticipated future turnout.

WHAT HAPPENS IF THIS PROPOSAL IS APPROVED?

The proposed amendment would modify Section 7 of Article Ninth of the Certificate such that the approval threshold to amend or repeal Article Ninth would be reduced from 80% or more of the voting power of the Company's common stock to a majority of the voting power of the Company's common stock. A copy of the proposed amendment, marked with strike-outs to show the deletions and underline text to show additions, is included in Appendix C on page 105.

If this proposal is approved, (1) the amended Certificate would become effective upon the filing of a Certificate of Amendment with the State of Delaware, which the Company would file promptly following the shareowner vote, and (2) the Board intends to propose an amendment at the Company's 2023 Annual Meeting that would repeal Article Ninth, which shareowners would then be able to approve by a vote of a majority of the Company's outstanding shares. Accordingly, if that subsequent amendment is approved at the Company's 2023 Annual Meeting, all business combinations would be subject only to any applicable approval requirements under the Delaware General Corporation Law.



The Board of Directors unanimously recommends a vote FOR this proposal.