



DIVISION OF  
CORPORATION FINANCE

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

January 24, 2022

Ning Chiu  
Davis Polk & Wardwell LLP

Re: Charles River Laboratories International, Inc. (the "Company")  
Incoming letter dated January 24, 2022

Dear Ms. Chiu:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Myra K. Young (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 27, 2021 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter 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

December 27, 2021

Re: Stockholder Proposal Submitted by Myra K. Young

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549  
via email: shareholderproposals@sec.gov

Ladies and Gentlemen:

On behalf of Charles River Laboratories International, Inc., a Delaware corporation (the “**Company**”), and in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), we are filing this letter with respect to the stockholder proposal (the “**Proposal**”) submitted by Myra K. Young (the “**Proponent**”) for inclusion in the proxy materials the Company intends to distribute in connection with its 2022 Annual Meeting of Stockholders (the “**2022 Proxy Materials**”). The Proposal is attached hereto as Exhibit A.

We hereby request confirmation that the Staff of the Division of Corporation Finance (the “**Staff**”) will not recommend any enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from the 2022 Proxy Materials.

Pursuant to Staff Legal Bulletin No. 14D (CF), Shareholder Proposals (November 7, 2008), Question C, we have submitted this letter and any related correspondence via email to shareholderproposals@sec.gov. Also, in accordance with Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company’s intention to omit the Proposal from the 2022 Proxy Materials. This letter constitutes the Company’s statement of the reasons it deems the omission of the Proposal to be proper.

## **THE PROPOSAL**

The Proposal states:

Resolved: Shareholders of Charles River Laboratories International Inc. (“Company”) request that our board of directors take the steps necessary to enable shareholders, without limits on group size, to aggregate their shares to equal 3% of our stock owned continuously for 3-years to enable shareholder proxy access with the following *essential* provisions:

Nominating shareholders and *unlimited groups of shareholders* must have owned at least 3% of the outstanding shares of common stock of the Company continuously for a period of at least 3-years. Such shareholders shall be entitled to nominate a total of 25% of the number of authorized directors rounded down to the nearest whole number.

The most essential feature requested is that shareholders forming a nominating group not be limited with regard to the number in a participating group.

## BACKGROUND

On December 15, 2021, the Company disclosed in a Current Report on Form 8-K filed with the Securities and Exchange Commission (the “**Commission**”) that its Board of Directors (the “**Board**”) adopted an amendment to its amended and restated by-laws (the “**By-Laws**”), effective December 13, 2021 (the “**By-Law Amendment**”). Section 1.14 was added to the By-Laws to permit a stockholder, or group of up to 20 stockholders, owning at least 3% of the Company’s outstanding stock continuously for at least three years to nominate and include in the Company’s annual meeting proxy materials up to the greater of two directors or 20% of the number of directors serving on the Board at the time of the nomination, provided that such stockholder(s) and nominee(s) satisfy the requirements specified in the By-Laws. A copy of the current By-Laws, including the By-Law Amendment, is attached hereto as Exhibit B.

## REASON FOR EXCLUSION OF THE PROPOSAL

The Company believes that the Proposal may be properly omitted from the 2022 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has already substantially implemented the Proposal.

### **The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company’s By-Law Amendment Has Substantially Implemented the Essential Objective of the Proposal by Offering Meaningful Proxy Access to Stockholders.**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. According to the Securities and Exchange Commission (the “**Commission**”), the purpose of this rule 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. 15, 1983); Exchange Act Release No. 34-12598 (July 1976). The Commission has also stated that “substantial” implementation under the rule does not require implementation in full or exactly as presented by the proponent. See Exchange Act Release No. 34-40018 (May 21, 1998, n.30).

The Staff has consistently found that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices, and procedures compare favorably with the guidelines of the proposal.” See *Texaco, Inc.* (Mar. 28, 1991) (permitting exclusion of a proposal requesting that the company adopt the Valdez Principles where the company had already adopted policies, practices, and procedures regarding the environment). See also, e.g., *BlackRock, Inc.* (Apr. 2, 2021); *JPMorgan Chase & Co.* (Mar. 9, 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); and *Wal-Mart Stores, Inc.* (Mar. 16, 2017). The Staff has concurred with exclusion of a proposal under Rule 14a-8(i)(10) when a company has substantially implemented and therefore satisfied the “essential objective” of a proposal, even if the company did not take the exact action requested by the proponent, did not implement the proposal in every detail, or exercised discretion in determining how to implement the proposal. See, e.g., *Salesforce.com, Inc.* (Apr. 20, 2021); *Apple Inc.* (Oct. 16, 2020); *Wal-Mart Stores, Inc.* (Mar. 25, 2015); and *Exelon Corp.* (Feb. 26, 2010).

The “essential objective” of the Proposal seeks meaningful proxy access for stockholders. The Staff has specifically concurred in the exclusion of a proxy access proposal where the company adopted a by-law that did not implement the proposal exactly as proposed by the stockholder, but that was substantially similar to the proposal and addressed the proposal’s “essential objective.” For example, in *Upwork Inc.* (Apr. 1, 2020), a proposal submitted by the same Proponent requested that the company adopt a proxy access by-law with the same features specified in the Proposal, including the Proposal’s request to cap stockholder nominees at 25% of directors and allow an unlimited number of stockholders to form a

nominating group. The Staff provided no-action relief with respect to the proposal in *Upwork Inc.*, even though the by-law adopted by the company included a 20% cap on stockholder nominees and a 20-stockholder limit on group nominations. See also, e.g., *Kaman Corporation* (Jan. 16, 2020); *Delta Air Lines, Inc.* (Mar. 12, 2018); *Assembly Biosciences, Inc.* (Feb. 26, 2018); *HCA Healthcare, Inc.* (Jan. 23, 2018); *JetBlue Airways Corp.* (Jan. 23, 2018); *Welbilt, Inc.* (Jan. 17, 2018); *Northern Trust Corp.* (Dec. 28, 2017); *Comcast Corporation* (Feb. 2, 2017); *Oracle Corporation* (Aug. 11, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *Omnicom Group Inc.* (Mar. 22, 2016); *General Motors Co.* (Mar. 21, 2016) (the “**Prior Proxy Access No-Action Letters**”).

Here, the Company believes the Proposal may be excluded because the By-Law Amendment substantially implements and therefore satisfies the “essential objective” of the Proposal. The below summary of the proxy access features requested by the Proposal and implemented in the By-Laws illustrates that the By-Law Amendment compares favorably with the guidelines of the Proposal.

- **Ownership Threshold; Holding Period.**

*Proposal.* The Proposal specifies that a stockholder or group of stockholders submitting a proxy access nominee “must have owned at least 3% of the outstanding shares of common stock of the Company continuously for a period of at least 3-years.”

*By-Law Amendment.* Section 1.14(c) of the By-Laws similarly provides that a stockholder or a group of stockholders is eligible to submit a proxy access nominee if such stockholder or group has “continuously owned...throughout the three-year period preceding and including the date of submission” of the nomination notice, at least “3% of the number of outstanding shares of capital stock” of the Company.”

- **Maximum Number of Stockholder Nominees.**

*Proposal.* The Proposal requests that nominating stockholders “be entitled to nominate a total of 25% of the number of authorized directors rounded down to the nearest whole number.”

*By-Law Amendment.* Section 1.14(b)(i) of the By-Laws provides that nominating stockholders can nominate the “greater of (A) two or (B) 20% of the total number of directors of the corporation then serving” at the time the nomination is made, “rounded down to the nearest whole number.

Although the By-Law Amendment permits proxy access director nominees to equal the greater of two or 20% of the Board serving at the time the of the nomination, rather than the Proposal’s exact request for a total of up to 25% of the Board, the By-Law Amendment nonetheless substantially implements the Proposal by providing meaningful proxy access to the Company’s stockholders. Here, the Proposal refers to its requested 25% cap as an “essential” provision, but adoption of this technical detail, versus a 20% cap, is not required in order for the By-Law Amendment to satisfy the Proposal’s “essential objective” of providing stockholders with meaningful proxy access. The Staff has also concurred with exclusion of similar proxy access proposals that requested the ability to nominate up to 25% of the Board where the company limited the percentage to 20%. See, e.g., the Prior Proxy Access No-Action Letters.

- **Aggregation of Stockholders to Satisfy Ownership Requirements.**

*Proposal.* The Proposal requests that stockholders “forming a nominating group not be limited with regard to the number in a participating group,” such that “unlimited groups” of stockholders can aggregate their stock to satisfy the 3% ownership threshold.

*By-Law Amendment.* Section 1.14(c)(ii) of the By-Laws limits aggregation of stock to “up to 20” eligible stockholders for the purposes of satisfying the ownership threshold for stockholder nominations.

Like with the maximum number of stockholder nominees, the By-Law Amendment still substantially implements the Proposal even though it does not adopt the Proposal’s specific request concerning the permitted size of a stockholder group aggregating their shares of stock to satisfy proxy access ownership requirements, instead limiting such groups to 20 stockholders. Although the Proposal refers to its unlimited aggregation request as “the most essential feature requested,” holistically unlimited aggregation is not necessary to support its “essential objective”—to provide stockholders with meaningful proxy access. Therefore, the By-Law Amendment does not need to implement this exact detail from the Proposal in order to substantially implement the essential objective; rather limiting aggregation to 20 stockholders is well within the bounds of the Proposal’s essential objective of proxy access. The Staff has concurred with exclusion of similar proxy access proposals that requested unlimited aggregation where the company limited aggregation to groups of 20 stockholders. See, e.g., the Prior Proxy Access No-Action Letters.

The Company has satisfied the Proposal’s essential objective by adopting the By-Law Amendment, which permits a stockholder, or group of stockholders, owning at least 3% of the Company’s outstanding stock continuously for at least three years to nominate and include in the Company’s annual meeting proxy materials director nominees, up to a specified limited number. Although the By-Law Amendment does not adopt every exact detail specified by the Proposal, it does permit a meaningful form of proxy access that “enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management’s director candidates,” as stated in the Proposal’s supporting statement. Accordingly, the Company believes the Proposal may be excluded under Rule 14a-8(i)(10).

## **CONCLUSION**

The Company requests confirmation that the Staff will not recommend any enforcement action if, in reliance on the foregoing, the Company omits the Proposal from its 2022 Proxy Materials. If you should have any questions or need additional information, please contact the undersigned at (212) 450-4908 or ning.chiu@davispolk.com.

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Matthew L. Daniel, Charles River Laboratories International, Inc.

John Chevedden, Agent of Proponent

## Proposal Shareholder Proxy Access

Resolved: Shareholders of Charles River Laboratories International Inc. (“Company”) request that our board of directors take the steps necessary to enable shareholders, without limits on group size, to aggregate their shares to equal 3% of our stock owned continuously for 3-years to enable shareholder proxy access with the following *essential* provisions:

Nominating shareholders and unlimited groups of shareholders must have owned at least 3% of the outstanding shares of common stock of the Company continuously for a period of at least 3-years. Such shareholders shall be entitled to nominate a total of 25% of the number of authorized directors rounded down to the nearest whole number.

The most essential feature requested is that shareholders forming a nominating group not be limited with regard to the number in a participating group.

Supporting Statement: Proxy access enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management's director candidates. A competitive election is good for everyone. Even if never used, this proposal helps ensure our board will nominate directors with outstanding qualifications to avoid giving shareholders a reason to exercise access rights.

*Proxy Access in the United States: Revisiting the Proposed SEC Rule*,<sup>1</sup> a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion. Governance Changes through *Shareholder Initiatives: The Case of Proxy Access*<sup>2</sup> found a 0.5 percent average increase in shareholder value for proxy access targeted firms.

Proxy access has been adopted by major companies, including 78% of the S&P 500. Adoption of this proposal will make our Company more competitive in its corporate governance. Our largest shareholders, BlackRock and Vanguard, voted in favor of 87% and 91% of shareholder proposals respectively to establish proxy access during the last 3.5 years.

Adding urgency to this proposal is a recent study finding directors generally do not want to monitor and are not sure they can do so effectively.<sup>3</sup> Corporate governance expert Nell Minow offered the following remarks: “Usually directors at least pretend to acknowledge their legal obligation to provide oversight of CEOs on behalf of shareholders.” “This acknowledgment that directors see themselves as corporate cheerleaders instead of skeptics whose job is to push back, question, and insist on better is further proof that shareholders will need to support more Engine No. 1-style challenges.”<sup>4</sup>

Eliminating group limits would allow employee shareholders with small holdings to join in nominating groups, opening communication channels between our Board and workers. Proxy access directors

<sup>1</sup> <https://www.cfainstitute.org/-/media/documents/article/position-paper/proxy-access-in-united-states-revisiting-proposed-secrule.ashx>

<sup>2</sup> <https://ssrn.com/abstract=2635695>

<sup>3</sup> <https://corpgov.law.harvard.edu/2021/09/02/corporate-directors-implicit-theories-of-the-roles-and-duties-of-boards/>

<sup>4</sup> <https://valueedgeadvisors.com/2021/09/02/corporate-directors-say-its-not-their-job-to-monitor-ceo-study-bloomberg/>

nominated by such groups would be able to more effectively monitor than typical outside directors and would bring a host of additional benefits.<sup>5</sup>

<sup>5</sup> <https://www.aspeninstitute.org/publications/new-corporate-boardroom/>

**By-Laws**



SIXTH AMENDED AND RESTATED  
BY-LAWS  
OF  
CHARLES RIVER LABORATORIES INTERNATIONAL, INC.

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SIXTH AMENDED AND RESTATED  
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BY-LAWS  
OF  
CHARLES RIVER LABORATORIES INTERNATIONAL, INC.

ARTICLE I - Stockholders

1.1 Place of Meetings

All meetings of stockholders shall be held at such place within or without the State of Delaware as may be designated from time to time by the Board of Directors or the Chief Executive Officer (or, if there is no Chief Executive Officer, the President) or, if not so designated, at the registered office of the corporation.

1.2 Annual Meeting

The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date to be fixed by the Board of Directors or the Chief Executive Officer (or, if there is no Chief Executive Officer, the President) (which date shall not be a legal holiday in the place where the meeting is to be held) at the time and place to be fixed by the Board of Directors or the Chief Executive Officer (or, if there is no Chief Executive Officer, the President) and stated in the notice of the meeting. If no annual meeting is held in accordance with the foregoing provisions, the Board of Directors shall cause the meeting to be held as soon thereafter as convenient. If no annual meeting is held in accordance with the foregoing provisions, a special meeting may be held in lieu of the annual meeting, and any action taken at that special meeting shall have the same effect as if it had been taken at the annual meeting, and in such case all references in these By-Laws to the annual meeting of the stockholders shall be deemed to refer to such special meeting.

1.3 Special Meetings

Special meetings of stockholders may be called at any time only by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer (or, if there is no Chief Executive Officer, the President), or (iii) the Board of Directors of the corporation pursuant to a resolution adopted by the affirmative vote of a majority of the total number of directors then in office. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meeting

Except as otherwise provided by law, written notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notices of all meetings shall state the place, date and hour of the meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the records of the corporation.

1.5 Voting List

The officer who has charge of the stock ledger of the corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, at a place within the city where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and may be inspected by any stockholder who is present.

1.6 Quorum

Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business.

1.7 Adjournments

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Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these By-Laws by a majority of the stockholders present or represented at the meeting and entitled to vote, although less than a quorum, or, if no stockholder is present, by any officer entitled to preside at or to act as Secretary of such meeting. It shall not be necessary to notify any stockholder of any adjournment of less than thirty (30) days if the time and place of the adjourned meeting are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

#### 1.8 Voting and Proxies

Except as otherwise provided by the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these By-Laws, each stockholder shall have one vote for each share of capital stock entitled to vote and held of record by such stockholder. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or may authorize another person or persons to vote or act for him or her by written proxy executed by the stockholder or his or her authorized agent and delivered to the Secretary of the corporation.

#### 1.9 Proxy Representation

Every stockholder may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, objecting to or voting or participating at a meeting, or expressing consent or dissent without a meeting. The delivery of a proxy on behalf of a stockholder consistent with telephonic or electronically transmitted instructions obtained pursuant to procedures of the corporation reasonably designed to verify that such instructions have been authorized by such stockholder shall constitute execution and delivery of the proxy by or on behalf of the stockholder. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally. The authorization of a proxy may but need not be limited to specified action; provided, however, that if a proxy limits its authorization to a meeting or meetings of stockholders, unless otherwise specifically provided, such proxy shall entitle the holder thereof to vote at any adjourned session but shall not be valid after the final adjournment thereof. A proxy purporting to be authorized by or on behalf of a stockholder, if accepted by the corporation in its discretion, shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

#### 1.10 Action at Meeting; Majority Vote Standard

Subject to the second paragraph of this Section 1.10, when a quorum is present at any meeting, a plurality of the votes properly cast for election to any office shall elect to such office and a majority of the votes properly cast upon any question other than an election to an office shall decide the question, except when a larger vote is required by law, the Certificate of Incorporation or these By-Laws. No ballot shall be required for any election unless requested by a stockholder present or represented at the meeting and entitled to vote in the election.

Subject to the rights of the holders of any series of preferred stock to elect additional directors under specific circumstances, a nominee for director shall be elected to the Board of Directors if the nominee receives a majority of the votes cast with respect to that nominee's election at any meeting for the election of directors at which a quorum is present; *provided, however*, that if as of the tenth (10th) day preceding the date the Corporation first mails its notice of meeting for such meeting to the stockholders of the Corporation, the number of nominees for director exceeds the number of directors to be elected (a "contested election"), the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. If an incumbent director nominee fails to receive a majority of the votes cast in an election that is not a contested election, the director shall immediately tender his or her resignation to the Board of Directors. The corporate governance and nominating committee of the Board of Directors, or such other committee designated by the Board of Directors, shall make a recommendation to the Board of Directors as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The Board of Directors shall act on the resignation, taking into account the corporate governance and nominating committee's recommendation, and publicly disclose (by a press release and/or filing an appropriate disclosure with the Securities and Exchange Commission (the "SEC")) its decision regarding the resignation within 90 days following certification of the election results. If the Board of Directors accepts a director's resignation pursuant to this Section 1.10, or if a nominee for director is not elected and the nominee is not an incumbent director, the

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remaining members of the Board of Directors may fill the resulting vacancy pursuant to Section 2.5 of these By-Laws or may decrease the size of the Board of Directors pursuant to Section 2.2.

#### 1.11 Action without Meeting

Stockholders may not take any action by written consent in lieu of a meeting.

#### 1.12 Nomination of Directors

Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto, (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this Section 1.12, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 1.12 or (c) by a Nominating Stockholder (as defined in Section 1.14) pursuant to Section 1.14 of these By-Laws, and except as otherwise required by law, any failure to comply with these procedures shall result in the nullification of such nomination or proposal of business. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation.

To be timely, a stockholder's notice pursuant to this Section 1.12 shall be delivered to and received by the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 30 days after such anniversary date then to be timely such notice must be received by the corporation not earlier than the close of business on the 120<sup>th</sup> day prior to such annual meeting and not later than the later of the close of business on the 70th day prior to the date of the meeting or the close of business on the 10th day following the day on which public announcement of the date of the meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.12. Such stockholder's notice shall set forth

(a) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934 (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and

(b) as to the stockholder giving the notice

(i) the name and address, as they appear on the corporation's books, of such stockholder and any Stockholder Associated Person (defined below) covered by clause (ii) below and

(ii) (A) the class or series and number of shares of the corporation which are held of record or are beneficially owned by such stockholder, the nominee proposed by the stockholder and by any Stockholder Associated Person with respect to the corporation's securities and a representation that the stockholder will notify the corporation in writing of the class or series and number of such shares owned of record and beneficially as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (B) a description of any agreement, arrangement or understanding with respect to the nomination between or among such stockholder, the nominee proposed by the stockholder, and any Stockholder Associated Person, any of their respective affiliates or associates, and any others (including their names) acting in concert with any of the foregoing and a representation that the stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (C) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, the nominee proposed by the stockholder, and any Stockholder Associated Person, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder, proposed nominee or such Stockholder Associated Person, with respect to shares of stock of the corporation and a representation that the stockholder will notify

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the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (D) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination; and (E) a representation whether the stockholder or the Stockholder Associated Person, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to elect the nominee and/or (y) otherwise to solicit proxies from stockholders in support of such nomination.

The corporation may require any proposed nominee to furnish such other information as it may reasonably require, including the completion of any questionnaires, to determine the eligibility of such proposed nominee to serve as a director of the corporation and the impact that such service would have on the ability of the corporation to satisfy the requirements of laws, rules, regulations and listing standards applicable to the corporation or its directors.

“*Stockholder Associated Person*” of any stockholder means (A) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (B) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and (C) any person controlling, controlled by or under common control with such Stockholder Associated Person.

### 1.13 Notice of Business

At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board of Directors, including as specified in the notice of meeting and any supplement thereto or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 1.13, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.13. For business to be properly brought before a stockholder meeting by a stockholder, the business must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice shall be delivered to and received by the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to such anniversary date or delayed more than 30 days after such anniversary date then to be timely such notice must be received by the corporation not earlier than the close of business on the 120<sup>th</sup> day prior to such annual meeting and not later than the later of the close of business on the 70th day prior to the date of the meeting or the close of business on the 10th day following the day on which public announcement of the date of the meeting is first made by the corporation. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described in this Section 1.13. A stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the meeting

(a) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend the By-Laws of the corporation, the text of the proposed amendment), and the reasons for conducting such business at the meeting;

(b) as to the stockholder giving the notice

(i) the name and address, as they appear on the corporation's books, of such stockholder and any Stockholder Associated Person covered by clauses (ii) and (iii) below and

(ii) (A) the class or series and number of shares of the corporation which are held of record or are beneficially owned by such stockholder and by any Stockholder Associated Person with respect to the corporation's securities and a representation that the stockholder will notify the corporation in writing of the class or series and number of such shares owned of record and beneficially as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (B) a description of any agreement, arrangement or understanding with respect to the proposal between or among such stockholder and any Stockholder Associated Person, any of their respective affiliates or associates, and any others (including their names) acting in concert with any of the foregoing and a representation that the stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (C) a description of any

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agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and any Stockholder Associated Person, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such Stockholder Associated Person, with respect to shares of stock of the corporation and a representation that the stockholder will notify the corporation in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed; (D) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; and (E) a representation whether the stockholder or the Stockholder Associated Person, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to adopt the proposal and/or (y) otherwise to solicit proxies from stockholders in support of such proposal.

(iii) any material interest of the stockholder or any Stockholder Associated Person in such business.

The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed in accordance with the procedures set forth in these Sections 1.12 and 1.13, and if any proposed nomination or business is not in compliance with these Sections as applicable, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of these Sections 1.12 and 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of these Sections 1.12 and 1.13, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

A stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these Sections 1.12 and 1.13; provided, however, that any references in these By-Laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to stockholder nominations or proposals as to any other business to be considered pursuant to these Sections 1.12 and 1.13 and compliance with these Sections shall be the exclusive means for a stockholder to make nominations or submit proposals for any other business to be considered at an annual or special meeting of stockholders (other than matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in these Sections 1.12 and 1.13 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to applicable rules and regulations under the Exchange Act.

#### 1.14 Nomination of Directors Included in the Corporation's Proxy Materials

(a) Subject to the provisions of this Section 1.14, if expressly requested in the relevant Nomination Notice (as defined below), the corporation shall include in its proxy statement for any annual meeting of stockholders (but not at any special meeting of stockholders): (i) the names of any person or persons nominated for election (each, a "Stockholder Nominee"), which shall also be included on the corporation's form of proxy and ballot, by any Eligible Stockholder (as defined below) or group of up to 20 Eligible Stockholders that, as determined by the Board of Directors, has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this Section 1.14 (such Eligible Stockholder or group of Eligible Stockholders being a "Nominating Stockholder"); (ii) disclosure about each Stockholder Nominee and the Nominating Stockholder required under SEC rules or other applicable law to be included in the proxy statement; (iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of each Stockholder Nominee's election to the Board of Directors (subject, without limitation, to Section 1.14(e)(ii), provided that such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "Supporting Statement")); and (iv) any other information that the corporation or the Board of Directors determines, in its discretion, to include in the proxy statement relating to the

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nomination of each Stockholder Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section 1.14 and any solicitation materials or related information with respect to a Stockholder Nominee.

For purposes of this Section 1.14, any determination to be made by the Board of Directors may also be made by a committee of the Board of Directors or any officer of the corporation designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the corporation, any Eligible Stockholder, any Nominating Stockholder, any Stockholder Nominee and any other person so long as made in good faith (without any further requirements). The chairman of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Stockholder Nominee has been nominated in accordance with the requirements of this Section 1.14 and, if not so nominated, shall direct and declare at the meeting that such Stockholder Nominee shall not be considered.

(b) (i) The corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Stockholder Nominees than that number of directors constituting the greater of (A) two or (B) 20% of the total number of directors of the corporation then serving on the last day on which a Nomination Notice may be submitted pursuant to this Section 1.14 (rounded down to the nearest whole number) (the "Maximum Number"). The Maximum Number for a particular annual meeting shall be reduced by: (1) each Stockholder Nominee whose nomination is withdrawn by the Nominating Stockholder or who becomes unwilling to serve on the Board of Directors; (2) each Stockholder Nominee who ceases to satisfy, or Nominating Stockholders that cease to satisfy, the eligibility requirements in this Section 1.14, as determined by the Board of Directors; (3) each Stockholder Nominee who the Board of Directors itself decides to nominate for election at such annual meeting; and (4) the number of incumbent directors who had been Stockholder Nominees at either of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting of stockholders is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in Section 1.14(d) but before the date of the annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Stockholder Nominees pursuant to this Section 1.14 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the corporation, each Nominating Stockholder will select one Stockholder Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the corporation's capital stock that each Nominating Stockholder disclosed as owned in its Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Stockholder Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 1.14(d), a Nominating Stockholder or a Stockholder Nominee ceases to satisfy the eligibility requirements in this Section 1.14, as determined by the Board of Directors, a Nominating Stockholder withdraws its nomination or a Stockholder Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing or other distribution of the definitive proxy statement, then the corporation: (A) shall not be required to include in its proxy statement or on any ballot or form of proxy the Stockholder Nominee or any successor or replacement Stockholder Nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (B) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee will not be included as a Stockholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting of stockholders. Any Nominating Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 1.14 shall rank such Stockholder Nominees based on the order in which the Nominating Stockholder desires such Stockholder Nominees be selected for inclusion in the corporation's proxy materials.

(c) (i) An "Eligible Stockholder" is a person who has either (A) been a record holder of the shares of capital stock of the corporation used to satisfy the eligibility requirements in this Section 1.14(c) continuously for the three-year period specified in subsection (c)(ii) of this Section 1.14 below or (B) provides to the Secretary of the corporation, within the time period referred to in Section 1.14(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors determines acceptable.

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(ii) An Eligible Stockholder or group of up to 20 Eligible Stockholders may submit a nomination in accordance with this Section 1.14 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) (as adjusted for any stock splits, reverse stock splits, stock dividends or similar events) of shares of the corporation's capital stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of shares through the date of the annual meeting of stockholders. The following shall be treated as one Eligible Stockholder if such Eligible Stockholder shall provide together with the Nomination Notice documentation satisfactory to the Board of Directors that demonstrates compliance with the following criteria: (A) funds under common management and investment control; (B) funds under common management and funded primarily by the same employer; or (C) a "family of investment companies" or a "group of investment companies" (each as defined in the Investment Company Act of 1940, as amended). For the avoidance of doubt, in the event of a nomination by a Nominating Stockholder that includes more than one Eligible Stockholder, any and all requirements and obligations for a given Eligible Stockholder or, except as the context otherwise makes clear, the Nominating Stockholder that are set forth in this Section 1.14, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the aggregate ownership of the group of Eligible Stockholders constituting the Nominating Stockholder. Should any Eligible Stockholder cease to satisfy the eligibility requirements in this Section 1.14, as determined by the Board of Directors, or withdraw from a group of Eligible Stockholders constituting a Nominating Stockholder at any time prior to the annual meeting of stockholders, the Nominating Stockholder shall be deemed to own only the shares held by the remaining Eligible Stockholders. As used in this Section 1.14, any reference to a "group" or "group of Eligible Stockholders" refers to any Nominating Stockholder that consists of more than one Eligible Stockholder and to all the Eligible Stockholders that make up such Nominating Stockholder.

(iii) The "*Minimum Number*" of shares of the corporation's capital stock means 3% of the number of outstanding shares of capital stock of the corporation as of the most recent date for which such amount is given in any filing by the corporation with the SEC prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 1.14, an Eligible Stockholder "owns" only those outstanding shares of the corporation's capital stock as to which such Eligible Stockholder possesses both (A) the full voting and investment rights pertaining to such shares and (B) the full economic interest in (including the opportunity for profit from and the risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (w) purchased or sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, (x) sold short by such Eligible Stockholder, (y) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding capital stock of the corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (a) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (b) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliates. An Eligible Stockholder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Stockholder. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares; provided that the Eligible Stockholder has the power to recall such loaned shares on not more than five business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the corporation are "owned" for these purposes shall be determined by the Board of Directors. For purposes of this Section 1.14(c)(iv),

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the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(v) No Eligible Stockholder shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any Eligible Stockholder appears as a member of more than one group, such Eligible Stockholder shall be deemed to be a member of only the group that has the largest ownership position as reflected in the Nomination Notice.

(d) To nominate a Stockholder Nominee pursuant to this Section 1.14, the Nominating Stockholder (including, for the avoidance of doubt, each group member in the case of a Nominating Stockholder consisting of a group of Eligible Stockholders) must deliver either by personal delivery or by certified mail, postage prepaid, to the Secretary at the principal executive offices of the corporation all of the following information and documents in a form that the Board of Directors or its designee determines acceptable (collectively, the “Nomination Notice”), not less than 120 days nor more than 150 days prior to the anniversary of the date that the corporation mailed its proxy statement for the prior year’s annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting of stockholders is not scheduled to be held within a period that commences 30 days before and concludes 30 days after the first anniversary date of the preceding year’s annual meeting of stockholders (an annual meeting date outside such period being referred to herein as an “Other Meeting Date”), then to be timely the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is 180 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed (in no event shall the adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice):

(i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven (7) calendar days prior to the date of the Nomination Notice, the Nominating Stockholder owns, and has continuously owned for the preceding three (3) years, the Minimum Number of shares, and the Nominating Stockholder’s agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Nominating Stockholder’s continuous ownership of the Minimum Number of shares through the record date;

(ii) an agreement to hold the Minimum Number of shares through the annual meeting of stockholders and to provide immediate notice if the Nominating Stockholder ceases to own the Minimum Number of shares at any time prior to the date of the annual meeting of stockholders;

(iii) a Schedule 14N (or any successor form) relating to each Stockholder Nominee, completed and filed with the SEC by the Nominating Stockholder, as applicable, in accordance with SEC rules;

(iv) the written consent of each Stockholder Nominee to being named in the corporation’s proxy statement, form of proxy and ballot as a Stockholder Nominee and to serving as a director if elected;

(v) a written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of each Stockholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, for the avoidance of doubt, each group member in the case of a Nominating Stockholder consisting of a group of Eligible Stockholders): (A) the information required with respect to the nomination of directors pursuant to Section 1.12 of these By-Laws; (B) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N; (C) a representation and warranty that the Nominating Stockholder acquired the securities of the corporation in the ordinary course of business and did not acquire, and is not holding, securities of the corporation for the purpose or with the intent of influencing or changing control of the corporation; (D) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than such Nominating Stockholder’s Stockholder Nominee(s); (E) a representation and warranty that the Nominating Stockholder has not engaged in and will not engage in a “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Section 14a-1(l)(2)(iv)) with respect to the annual meeting, other than with respect to such Nominating Stockholder’s Stockholder Nominee(s) or any nominee of the Board of Directors; (F) a representation and warranty that the Nominating Stockholder will not use any

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proxy card other than the corporation's proxy card in soliciting stockholders in connection with the election of a Stockholder Nominee at the annual meeting; (G) a representation and warranty that each Stockholder Nominee's candidacy or, if elected, membership on the Board of Directors would not violate applicable state or federal law or the rules of any stock exchange on which the corporation's securities are traded; (H) a representation and warranty that each Stockholder Nominee: (a) does not have any direct or indirect relationship with the corporation that would cause the Stockholder Nominee to be deemed not independent and the rules of the primary stock exchange on which the corporation's shares of capital stock are traded; (b) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the corporation's shares of capital stock are traded; (c) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (d) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Stockholder Nominee; and (e) meets the director qualifications set forth in the corporation's corporate governance guidelines; (I) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 1.14(c); (J) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 1.14(c) through the date of the annual meeting; (K) details of any position of a Stockholder Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the corporation or its affiliates) of the corporation, within the three years preceding the submission of the Nomination Notice; (L) if desired, a Supporting Statement; and (M) in the case of a nomination by a Nominating Stockholder comprised of a group, the designation by all Eligible Stockholders in such group of one Eligible Stockholder that is authorized to act on behalf of the Nominating Stockholder with respect to matters relating to the nomination, including withdrawal of the nomination;

(vi) an executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Stockholder (including in the case of a group, each Eligible Stockholder in that group) agrees: (A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election; (B) to file any written solicitation or other communication with the corporation's stockholders relating to one or more of the corporation's directors or director nominees or any Stockholder Nominee with the SEC, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation; (C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Stockholder Nominees with the corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice; (D) to indemnify and hold harmless (jointly with all other Eligible Stockholders, in the case of a group of Eligible Stockholders) the corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Stockholder Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 1.14; (E) in the event that any information included in the Nomination Notice or any other communication by the Nominating Stockholder (including with respect to any Eligible Stockholder included in a group) with the corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; and (F) in the event that the Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in Section 1.14(c), to promptly notify the corporation; and

(vii) an executed agreement, in a form deemed satisfactory by the Board of Directors, by each Stockholder Nominee: (A) to provide to the corporation such other information and certifications, including completion of the corporation's director nominee questionnaire, as the

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Board of Directors may reasonably request; (B) at the reasonable request of the corporate governance and nominating Committee, to meet with such committee to discuss matters relating to the nomination of such Stockholder Nominee to the Board of Directors, including the information provided by such Stockholder Nominee to the corporation in connection with his or her nomination and such Stockholder Nominee's eligibility to serve as a member of the Board of Directors; (C) that such Stockholder Nominee has read and agrees, if elected, to adhere to the corporation's corporate governance guidelines, code of conduct, related person transaction policy and any other policies and guidelines of the corporation applicable to directors; and (D) that such Stockholder Nominee is not and will not become a party to (1) any compensatory, payment or other financial agreement, arrangement or understanding that each nominee has with any other person or entity other than the corporation including the amount of any payment or payments received or receivable thereunder, in each case in connection with candidacy or service as a director of the corporation (a "Third-Party Compensation Arrangement") in connection with his or her nomination or candidacy as a director of the corporation that has not been fully disclosed to the corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice, (2) any Third-Party Compensation Arrangement in connection with his or her service or action as a director of the corporation, (3) any Voting Commitment that has not been fully disclosed to the corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice or (4) any Voting Commitment that could limit or interfere with such Stockholder Nominee's ability to comply, if elected as a director of the corporation, with his or her fiduciary duties under applicable law.

The information and documents required by this Section 1.14(d) to be provided by the Nominating Stockholder shall be (A) provided with respect to and executed by each Eligible Stockholder in the group in the case of a Nominating Stockholder comprised of a group of Eligible Stockholders; and (B) provided with respect to the persons specified in Instructions 1 and 2 to Item 6(c) and (d) of Schedule 14N (or any successor item) (x) in the case of a Nominating Stockholder that is an entity and (y) in the case of a Nominating Stockholder that is a group that includes one or more Eligible Stockholders that are entities. The Nomination Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 1.14(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to and received by the Secretary of the corporation.

(e) (i) Notwithstanding anything to the contrary contained in this Section 1.14, the corporation may omit from its proxy statement any Stockholder Nominee and any information concerning such Stockholder Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Stockholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Stockholder Nominee, if (A) the corporation receives a notice pursuant to the advance notice requirements set forth in Section 1.12 of these By-Laws that a stockholder intends to nominate a candidate for director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the corporation, (B) the Nominating Stockholder (or, in the case of a Nominating Stockholder consisting of a group of Eligible Stockholders, the Eligible Stockholder that is authorized to act on behalf of the Nominating Stockholder), or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Section 1.14, the Nominating Stockholder withdraws its nomination or the chairman of the meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 1.14 and shall therefore be disregarded; (C) the Board of Directors determines that such Stockholder Nominee's nomination or election to the Board of Directors would result in the corporation violating or failing to be in compliance with these By-Laws or the Certificate of Incorporation or any applicable law, rule or regulation to which the corporation is subject, including any rules or regulations of any stock exchange on which the corporation's securities are traded; (D) such Stockholder Nominee was nominated for election to the Board of Directors pursuant to this Section 1.14 at one of the corporation's two preceding annual meetings of stockholders and withdrew from or became ineligible or unavailable for election at such annual meeting or received a vote of less than 25% of the shares of capital stock cast for; (E) such Stockholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or (F) the corporation is notified, or the Board of Directors determines, that the Nominating Stockholder or such Stockholder Nominee has failed to continue to satisfy the eligibility requirements described in Section 1.14(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such

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Stockholder Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Stockholder or such Stockholder Nominee under this Section 1.14.

(ii) Notwithstanding anything to the contrary contained in this Section 1.14, the corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Stockholder Nominee included in the Nomination Notice, if the Board of Directors determines that (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority; (C) the inclusion of such information in the proxy statement would otherwise violate the SEC's proxy rules or any other applicable law, rule or regulation; or (D) the inclusion of such information in the proxy statement would impose a material risk of liability upon the corporation.

The corporation may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

#### 1.15 Organization

The Chairman of the Board, or in his or her absence the President, shall call meetings of the stockholders to order, and act as chairman of such meeting; provided, however, that the Board of Directors may appoint any stockholder to act as chairman of any meeting in the absence of the Chairman of the Board. The Secretary of the corporation shall act as secretary at all meetings of the stockholders; provided, however, that in the absence of the Secretary at any meeting of the stockholders, the acting chairman may appoint any person to act as secretary of the meeting.

### ARTICLE II - Directors

#### 2.1 General Powers

The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law, the Certificate of Incorporation or these By-Laws. In the event of a vacancy in the Board of Directors, the remaining directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until the vacancy is filled.

#### 2.2 Number; Election and Qualification

The number of directors which shall constitute the whole Board of Directors shall be determined by resolution of the Board of Directors, but in no event shall be less than three. The number of directors may be decreased at any time and from time to time either by the stockholders or by a majority of the directors then in office, but only to eliminate vacancies existing by reason of the death, resignation, removal or expiration of the term of one or more directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Directors need not be stockholders of the corporation.

#### 2.3 Enlargement of the Board

The number of directors may be increased at any time and from time to time by the stockholders or by a majority of the directors then in office.

#### 2.4 Tenure

Each director shall hold office until the next annual meeting and until his successor is elected and qualified, or until his earlier death, resignation or removal.

#### 2.5 Vacancies

Any vacancy in the Board of Directors, however occurring, including a vacancy resulting from an enlargement of the Board of Directors, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and a director chosen to fill a position resulting from an

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increase in the number of directors shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified, or until his earlier death, resignation or removal.

#### 2.6 Resignation

Any director may resign by delivering his or her written resignation to the corporation at its principal office or to the President or Secretary. Except as provided in Section 1.10, such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

#### 2.7 Regular Meetings

Regular meetings of the Board of Directors may be held without notice at such time and place, either within or without the State of Delaware, as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

#### 2.8 Special Meetings

Special meetings of the Board of Directors may be held at any time and place, within or without the State of Delaware, designated in a call by the Chairman of the Board of Directors, the Chief Executive Officer (or, if there is no Chief Executive Officer, the President), two or more directors, or by one director in the event that there is only a single director in office.

#### 2.9 Notice of Special Meetings

Notice of any special meeting of the Board of Directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting, Notice shall be duly given to each director (i) by giving notice to such director in person or by telephone at least twenty-four (24) hours in advance of the meeting, (ii) by sending a telegram, teletype or telex, or delivering written notice by hand, to his or her last known business or home address at least twenty-four (24) hours in advance of the meeting, or (iii) by mailing written notice to his or her last known business or home address at least seventy-two (72) hours in advance of the meeting.. A notice or waiver of notice of a special meeting of the Board of Directors need not specify the purposes of the meeting.

#### 2.10 Meetings by Telephone Conference Calls

Directors or any members of any committee of the Board of Directors designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at such meeting.

#### 2.11 Quorum

A majority of the total number of the whole Board of Directors shall constitute a quorum at all meetings of the Board of Directors. In the event one or more of the directors shall be disqualified to vote at any meeting, then the required quorum shall be reduced by one for each such director so disqualified; provided, however, that in no case shall less than one-third (1/3) of the number of directors so fixed constitute a quorum. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, other than announcement at the meeting, until a quorum shall be present.

#### 2.12 Action at Meeting

At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by law, the Certificate of Incorporation or these By-Laws.

#### 2.13 Action by Consent

Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board of Directors may be taken without a meeting, if all members of the Board or committee, as the case may be, consent to the action in writing, and the written consents are filed with the minutes of proceedings of the Board of Directors or committee of the Board of Directors, as applicable.

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#### 2.14 Removal

The directors of the corporation may be removed only by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors at a meeting of the stockholders called for that purpose.

#### 2.15 Committees

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the General Corporation Law of the State of Delaware, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the director's or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the Board of Directors.

#### 2.16 Compensation of Directors

Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary corporations in any other capacity and receiving compensation for such service.

### ARTICLE III - Officers

#### 3.1 Enumeration

The officers of the corporation shall consist of a Chief Executive Officer, a President, a Chief Financial Officer, a Secretary and a Treasurer. The Board of Directors may appoint other officers with such titles and powers as it may deem appropriate, including, without limitation, a Chairman of the Board, a Vice-Chairman of the Board, and one or more Vice Presidents, Assistant Treasurers, Assistant Secretaries and Controllers, The Board of Director's may appoint such other officers as it may deem appropriate.

#### 3.2 Election

The Chief Executive Officer, President, Chief Financial Officer, Secretary and Treasurer shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officer's may be appointed by the Board of Directors at such meeting or at any other meeting.

#### 3.3 Qualification

No officer need be a stockholder of the corporation. Any two or more offices may be held by the same person.

#### 3.4 Tenure

Except as otherwise provided by law, by the Certificate of Incorporation or by these By-Laws, each officer shall hold office until his or her successor is elected and qualified, unless a different term is specified in the vote choosing or appointing him or her, or until his or her earlier death, resignation or removal.

#### 3.5 Resignation and Removal

Any officer may resign by delivering his or her written resignation to the corporation at its principal office or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Any officer may be removed at any time, with or without cause, by vote of a majority of the entire number of directors then in office.

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Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his or her resignation or removal, or any right to damages on account of such removal, whether his or her compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the corporation.

### 3.6 Vacancies

The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, President, Secretary and Treasurer. Each such successor shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

### 3.7 Chairman of the Board

The Board of Directors may appoint a Chairman of the Board. If the Board of Directors appoints a Chairman of the Board, he or she shall perform such duties and possess such powers as are assigned to him or her by the Board of Directors.

### 3.8 Chief Executive Officer

The Chief Executive Officer shall, subject to the direction of the Board of Directors, have general charge and supervision of the business of the corporation. The Chief Executive Officer shall perform such other duties and possess such other powers as the Board of Directors may from time to time prescribe.

### 3.9 President

The President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer, the President shall perform the duties of the Chief Executive Officer and when so performing shall have all the powers of and be subject to all the restrictions upon the office of Chief Executive Officer.

### 3.10 Chief Financial Officer

The Chief Financial Officer shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Chief Financial Officer shall have the custody of the corporate funds and securities; shall keep full and accurate all books and accounts of the corporation as shall be necessary or desirable in accordance with applicable law or generally accepted accounting principles; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the Chairman of the Board or the Board of Directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; and shall render to the Board of Directors, at its regular meeting or when the Board of Directors so requires, an account of the corporation.

### 3.11 Vice Presidents

Any Vice President shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the President may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other such title.

### 3.12 Controllers

Any Controller shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or any Vice President may from time to time prescribe.

### 3.13 Secretary

The Secretary shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the Secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and

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prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

In the event of the absence, inability or refusal to act of the Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary secretary to keep a record of the meeting.

#### 3.14 Treasurer

The Treasurer shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Chief Financial Officer may from time to time prescribe. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these By-Laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation. Unless the Board of Directors has designated another officer as Chief Financial Officer, the Treasurer shall be the Chief Financial Officer of the corporation.

In the event of the absence, inability or refusal to act of the Treasurer, the Board of Directors shall appoint a temporary treasurer, who shall perform the duties and exercise the powers of the Treasurer.

#### 3.15 Other Officers, Assistant Officers and Agents

Officers, assistant officers and agents, if any, other than those whose duties are provided for in these By-laws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the Board of Directors.

#### 3.16 Salaries

Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

### ARTICLE IV - Capital Stock

#### 4.1 Issuance of Stock

Unless otherwise voted by the stockholders and subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any unissued balance of the authorized capital stock of the corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such consideration and on such terms as the Board of Directors may determine.

#### 4.2 Certificates of Stock

Every holder of stock of the corporation shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him or her in the corporation. Each such certificate shall be signed by, or in the name of the corporation by, the Chairman of the Board of Directors, the Chief Executive Officer or the President, and the Treasurer or the Secretary of the corporation. Any or all of the signatures on the certificate may be a facsimile.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, the By-Laws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

#### 4.3 Transfers

Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-Laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of

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such stock, until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-Laws.

#### 4.4 Lost, Stolen or Destroyed Certificates

The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen, or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

#### 4.5 Record Date

The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

#### 4.6 Dividends

Subject to limitations contained in the General Corporation Law of the State of Delaware, the Certificate of Incorporation and these By-Laws, the Board of Directors may declare and pay dividends upon the shares of capital stock of the corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the corporation.

### ARTICLE V - General Provisions

#### 5.1 Fiscal Year

Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall end on the last Saturday of December in each year.

#### 5.2 Corporate Seal

The corporate seal shall be in such form as shall be approved by the Board of Directors.

#### 5.3 Waiver of Notice

Whenever any notice whatsoever is required to be given by law, by the Certificate of Incorporation or by these By-Laws, a waiver of such notice either in writing signed by the person entitled to such notice or such person's duly authorized attorney, or by telegraph, cable or any other available method, whether before, at or after the time stated in such waiver, or by the appearance of such person at such meeting in person or by proxy, shall be deemed equivalent to such notice. Any member of the Board of Directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

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#### 5.4 Voting of Securities

Except as the directors may otherwise designate, the Chief Executive Officer or Treasurer may waive notice of, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at, any meeting of stockholders or shareholders of any other corporation or organization, the securities of which may be held by this corporation.

#### 5.5 Evidence of Authority

A certificate by the Secretary, or a temporary secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

#### 5.6 Certificate of Incorporation

All references in these By-Laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended or restated and in effect from time to time.

#### 5.7 Transactions with Interested Parties

No contract or transaction between the corporation and one or more of the directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of the directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or a committee of the Board of Directors which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(1) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee of the Board of Directors in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

(2) The material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract or transaction.

#### 5.8 Exclusive Forum

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Certificate of Incorporation or these By-Laws (in each case, as they may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine shall be a state court located within the state of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware)

#### 5.9 Severability

Any determination that any provision of these By-Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws.

#### 5.10 Pronouns

All pronouns used in these By-Laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

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#### 5.11 Contracts

In addition to the powers otherwise granted to officers pursuant to Article 4 hereof, the Board of Directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

#### 5.12 Loans

The corporation may lend money to, or guarantee any obligation of or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

#### 5.13 Inspection of Books and Records

The Board of Directors shall have power from time to time to determine to what extent and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the corporation.

#### 5.14 Section Headings

Section headings in these By-laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

#### 5.15 Inconsistent Provisions

In the event that any provision of these By-laws is or becomes inconsistent with any provision of the Restated Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these By-laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

### ARTICLE VI - Amendments

#### 6.1 By the Board of Directors

These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present.

#### 6.2 By the Stockholders

Notwithstanding any other provision of law, the Certificate of Incorporation or these By-Laws, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least eighty percent (80%) of the shares of the capital stock of the corporation issued and outstanding and entitled to vote shall be required to alter, amend or repeal Sections 1.4, 1.11, 1.12, 1.13 and 2.14 of these By-Laws or to adopt new By-Laws containing provisions inconsistent with such Sections. All other Sections of these By-Laws may be adopted, amended or repealed by vote of a majority of the voting power of the stock outstanding and entitled to vote.

January 24, 2022

Re: Withdrawal of No-Action Request Dated December 27, 2021

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

Ladies and Gentlemen:

We refer to our letter, dated December 27, 2021, (the “**No-Action Request**”), pursuant to which we requested that the Staff of the Division of Corporate Finance concur with our view that Charles River Laboratories International, Inc. (the “**Company**”) may exclude the shareholder proposal and supporting statement (the “**Proposal**”) submitted by Myra K. Young (the “**Proponent**”) from the proxy materials it intends to distribute in connection with its 2022 Annual Meeting of Stockholders.

After discussions between the Company and the Proponent, the Proponent has agreed to withdraw this Proposal. Attached hereto as Exhibit A is a withdrawal communication dated January 21, 2022 (the “**Withdrawal Communication**”) from the Proponent to the Company in which the Proponent voluntarily agrees to withdraw the Proposal. In reliance on the Withdrawal Communication, we hereby withdraw the No-Action Request.

#### **CONCLUSION**

If you should have any questions or need additional information please contact the undersigned at (212) 450-4908 or ning.chiu@davispolk.com.

Respectfully yours,



Ning Chiu

Attachment

cc w/ att: Janet McGinness, Mastercard

John Chevedden, Agent of Proponent



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**Subject:** FW: (CRL)

**From:** mky <\_\_\_\_>

**Date:** January 21, 2022 at 9:24:49 PM EST

**To:** SEC - Office of Chief Counsel <[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)>

**Cc:** "Chiu, Ning" <\_\_\_\_>, Matthew Daniel <\_\_\_\_>, John Chevedden  
<\_\_\_\_>

**Subject:** (CRL)

This is to officially withdraw my proposal on proxy access filed at Charles River Laboratories International, Inc

Let me know if something more formal is required.

MK Young, Shareholder Advocate  
CorpGov.net