



DIVISION OF
CORPORATION FINANCE

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

February 7, 2022

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

Re: Stryker Corporation (the "Company")
Incoming letter dated December 10, 2021

Dear Mr. Gerber:

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

The Proposal requests that the board take the steps necessary to enable an unlimited number of shareholders to aggregate their shares for purposes of satisfying the ownership requirement necessary to make a proxy access nomination, and to allow such shareholders to nominate a total of 25% of the number of authorized directors, rounded down to the nearest whole number.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information presented, we are unable to conclude that the Company's proxy access bylaw substantially implements the Proposal.

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

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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BY EMAIL (shareholderproposals@sec.gov)

December 10, 2021

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

RE: Stryker Corporation – 2022 Annual Meeting
Omission of Shareholder Proposal of Myra K. Young

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we are writing on behalf of our client, Stryker Corporation, a Michigan corporation (“Stryker”), to request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) concur with Stryker’s view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the “Proposal”) submitted by Myra K. Young (“Ms. Young”), with John Chevedden (“Mr. Chevedden”) and/or James McRitchie (“Mr. McRitchie”) authorized to act on Ms. Young’s behalf, from the proxy materials to be distributed by Stryker in connection with its 2022 annual meeting of shareholders (the “2022 proxy materials”). Ms. Young and Messrs. Chevedden and McRitchie are sometimes collectively referred to as the “Proponents.”

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are

simultaneously sending a copy of this letter and its attachments to the Proponents as notice of Stryker's intent to omit the Proposal from the 2022 proxy materials.

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

I. The Proposal

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

Resolved: Shareholders of Stryker Corporation ("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.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur in Stryker's view that it may exclude the Proposal from the 2022 proxy materials pursuant to Rule 14a-8(i)(10) because Stryker has substantially implemented the Proposal.

III. Background

Stryker received the Proposal on November 14, 2021, via email from Ms. Young and accompanied by a cover letter from her. On November 17, 2021, Stryker sent a letter via email to Ms. Young and Messrs. Chevedden and McRitchie requesting a written statement from the record holder of Ms. Young's shares

verifying that Ms. Young beneficially owned the requisite number of shares of Stryker common stock continuously for at least the requisite period preceding and including November 14, 2021, the date of submission of the Proposal (the “Deficiency Letter”). On November 22, 2021, Stryker received an email from Ms. Young including a letter from TD Ameritrade, dated November 19, 2021, verifying her continuous ownership of at least the requisite amount of stock for at least the requisite period (the “Broker Letter”). Copies of the Proposal, cover letter, the Deficiency Letter, the Broker Letter and related correspondence are attached hereto as Exhibit A.

IV. The Proposal May be Excluded Under Rule 14a-8(i)(10) Because Stryker Has Substantially Implemented the Proposal.

A. Rule 14a-8(i)(10)

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

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

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10), even if the proposal has not been implemented exactly as proposed by the shareholder proponent, where a company has satisfied the essential objective of the proposal.

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

See, e.g., AGL Resources Inc. (Jan. 23, 2015, *recon. granted*, Mar. 5, 2015) (permitting exclusion under Rule 14a-8(i)(10) of a proposal seeking to grant holders of 25% of the company's outstanding shares the power to call a special meeting where the board approved, and undertook to submit for shareholder approval, an amendment to the articles of incorporation to grant shareholders holding for at least one year 25% of the outstanding shares the power to call a special meeting); *Textron, Inc.* (Jan. 21, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting immediate board declassification where the board submitted a phased-in declassification proposal for shareholder approval); *Hewlett-Packard Co.* (Dec. 11, 2007) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting the ability for shareholders to call special meetings where the board had proposed a bylaw amendment allowing shareholders to call a special meeting unless the business to be proposed at that meeting recently had been, or soon would be, addressed at an annual meeting).

B. The Essential Objective of Proposals Asking the Board to Adopt Proxy Access

The Staff consistently has permitted exclusion under Rule 14a-8(i)(10) of a shareholder proposal asking the board of directors to provide shareholders with proxy access with procedures and criteria set forth in the proposal where the company "adopted a proxy access bylaw that address[ed] the proposal's essential objective." *See, e.g., PetMed Express, Inc.* (Apr. 14, 2020)*; *Upwork Inc.* (Apr. 1, 2020)*; *CDW Corp.* (Feb. 25, 2020)*; *Kaman Corp.* (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); *Marriott Int'l, Inc.* (Jan. 10, 2017, *recon. granted* Feb. 27, 2017); *AutoNation, Inc.* (Dec. 30, 2016); *Cisco Systems, Inc.* (Sept. 27, 2016); *WD-40 Co.* (Sept. 27, 2016); *Oracle Corp.* (Aug. 11, 2016); *Cardinal Health, Inc.* (July 20, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *Amphenol Corp.* (Mar. 8, 2016, *recon. granted* Mar. 29, 2016); *Omnicom Group Inc.* (Mar. 22, 2016); *General Motors Co.* (Mar. 21, 2016); *Quest Diagnostics Inc.* (Mar. 17, 2016); *Chemed Corp.* (Mar. 9, 2016); *Eastman Chemical Co.* (Mar. 9, 2016); *Newell Rubbermaid Inc.* (Mar. 9, 2016); *Amazon.com, Inc.* (Mar. 3, 2016); *Anthem, Inc.* (Mar. 3, 2016); *Fluor Corp.* (Mar. 3, 2016); *Int'l Paper Co.* (Mar. 3, 2016); *ITT Corp.* (Mar. 3, 2016); *McGraw Hill Financial, Inc.* (Mar. 3, 2016); *PG&E Corp.* (March 3, 2016); *Public Service Enterprise Group Inc.* (Mar. 3, 2016); *Sempra Energy* (Mar. 3, 2016); *Xylem Inc.* (Mar. 3, 2016); *The Wendy's Co.* (Mar. 2, 2016); *Reliance Steel & Aluminum Co.* (Feb. 26, 2016); *United Continental Holdings, Inc.* (Feb. 26, 2016); *Alaska Air Group, Inc.* (Feb. 12, 2016); *Baxter Int'l Inc.* (Feb. 12, 2016); *Capital One Financial Corp.* (Feb. 12, 2016); *Cognizant Technology Solutions Corp.* (Feb. 12, 2016); *The Dun & Bradstreet Corp.*

(Feb. 12, 2016); *General Dynamics Corp.* (Feb. 12, 2016); *Huntington Ingalls Industries, Inc.* (Feb. 12, 2016); *Illinois Tool Works, Inc.* (Feb. 12, 2016); *Northrop Grumman Corp.* (Feb. 12, 2016); *PPG Industries, Inc.* (Feb. 12, 2016); *Science Applications Int'l Corp.* (Feb. 12, 2016); *Target Corp.* (Feb. 12, 2016); *Time Warner, Inc.* (Feb. 12, 2016); *UnitedHealth Group, Inc.* (Feb. 12, 2016); *The Western Union Co.* (Feb. 12, 2016).

In particular, the Staff consistently has permitted exclusion under Rule 14a-8(i)(10) of a proposal that requested the company adopt a proxy access provision that, among other things, permitted an unlimited number of shareholders to form a nominating group even though the company expressly limited that number. See, e.g., *PetMed Express, Inc.* (Apr. 14, 2020)*; *Upwork Inc.* (Apr. 1, 2020)*; *CDW Corp.* (Feb. 25, 2020)*; *Kaman Corp.* (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); *AutoNation, Inc.* (Dec. 30, 2016); *Cisco Systems, Inc.* (Sept. 27, 2016); *WD-40 Co.* (Sept. 27, 2016); *Oracle Corp.* (Aug. 11, 2016); *Cardinal Health, Inc.* (July 20, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *Amphenol Corp.* (Mar. 8, 2016, recon. granted Mar. 29, 2016); *Omnicom Group Inc.* (Mar. 22, 2016); *General Motors Co.* (Mar. 21, 2016); *Quest Diagnostics Inc.* (Mar. 17, 2016); *Chemed Corp.* (Mar. 9, 2016); *Alaska Air Group, Inc.* (Feb. 12, 2016); *Baxter Int'l Inc.* (Feb. 12, 2016); *Capital One Financial Corp.* (Feb. 12, 2016); *General Dynamics Corp.* (Feb. 12, 2016); *Huntington Ingalls Industries, Inc.* (Feb. 12, 2016); *Illinois Tool Works, Inc.* (Feb. 12, 2016).

Moreover, the Staff has permitted exclusion under Rule 14a-8(i)(10) of a proposal that requested the company implement various amendments to its proxy access provision, including elimination of the aggregation limit on the number of shareholders that can form a nominating group, where the company made some of the requested changes to its proxy access provision but did not eliminate the aggregation limit. For example, in *Oshkosh Corp.* (Nov. 4, 2016), the Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal asking the board to amend certain provisions of the company's proxy access bylaw in accordance with the six "essential elements" specified in the proposal. In arguing that the proposal had been substantially implemented, the company explained that it had adopted three of the six proposed changes in the proposal, excluding the elimination of the 20 person limit on the number of shareholders who may aggregate their shares to meet the minimum ownership requirement. Although the proposal asked for the adoption of all of the proposed changes, the Staff concluded that the company's bylaw amendments implementing three of the proposed changes "compare favorably with the guidelines of the proposal" and that the company substantially implemented the proposal.

C. Stryker's Amended and Restated Bylaws Satisfy the Proposal's Essential Objective.

On July 31, 2019, the Board of Directors (the "Board") amended and restated Stryker's bylaws (as amended and restated, the "Amended Bylaws") to, among other things, adopt a new proxy access provision (the "Proxy Access Provision"). Set forth in new Section 2.13 of Article II of the Amended Bylaws, the Proxy Access Provision permits a shareholder, or a group of up to 20 shareholders, owning 3% or more of Stryker's outstanding common stock continuously for at least three years to nominate and include in Stryker's annual meeting proxy materials director candidates constituting up to the greater of two individuals or 20% of the Board, provided that the shareholder(s) and the nominee(s) satisfy the requirements specified in the Amended Bylaws. The Amended Bylaws are included as an exhibit to Stryker's Current Report on Form 8-K filed with the Commission on August 6, 2019.¹

Consistent with the precedent described above, the Proxy Access Provision satisfies the Proposal's essential objective – providing a shareholder or group of shareholders that have owned 3% or more of Stryker's common stock continuously for at least three years the ability to include director nominees in Stryker's annual meeting proxy materials, up to a specified limit. As noted in the Proposal's supporting statement, the principal feature of a proxy access provision is that it "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."

In this respect, the Proposal specifies that a shareholder or group of shareholders submitting a proxy access nominee "must have owned at least 3% of the outstanding shares of common stock of [Stryker] continuously for a period of at least 3-years." Article II, Section 2.13(d) of the Amended Bylaws provides that a shareholder or a group of shareholders is eligible to submit a proxy access nominee if such shareholder or group (i) has owned continuously for at least three years at least 3% of the outstanding shares of Stryker's common stock, (ii) continues to own the required amount of shares through the date of the annual meeting and (iii) satisfies the other requirements of the Proxy Access Provision.

¹ Stryker's Amended Bylaws were subsequently amended and restated on February 2, 2021 to allow holders of at least 25% of the common stock of Stryker the right to call special meetings of the shareholders and make certain other clarifying and conforming changes. None of those changes impacted the Proxy Access Provision. The further amended and restated Amended Bylaws are included as an exhibit to Stryker's Current Report on Form 8-K filed with the Commission on February 5, 2021, and are attached hereto as Exhibit B.

In addition, the Proposal requests that “[nominating] shareholders shall be entitled to nominate a total of 25% of the number of authorized directors rounded down to the nearest whole number.” Article II, Section 2.13(c) of the Amended Bylaws provides that the maximum number of proxy access nominees that will be included in Stryker’s proxy materials with respect to an annual meeting of shareholders shall not exceed the greater of (i) two or (ii) 20% of the number of directors then in office or, if such amount is not a whole number, the closest whole number below 20%. Although the Proxy Access Provision does not permit proxy access nominees to equal up to 25% of the Board, the Staff has permitted exclusion of 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., PetMed Express, Inc.* (Apr. 14, 2020)*; *Upwork Inc.* (Apr. 1, 2020)*; *CDW Corp.* (Feb. 25, 2020)*; *Kaman Corp.* (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); *Marriott Int’l, Inc.* (Jan. 10, 2017, recon. granted Feb. 27, 2017); *AutoNation, Inc.* (Dec. 30, 2016); *Cisco Systems, Inc.* (Sept. 27, 2016); *WD-40 Co.* (Sept. 27, 2016); *Oracle Corp.* (Aug. 11, 2016); *Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *Amphenol Corp.* (Mar. 8, 2016, recon. granted Mar. 29, 2016); *Omnicom Group Inc.* (Mar. 22, 2016); *General Motors Co.* (Mar. 21, 2016); *Quest Diagnostics Inc.* (Mar. 17, 2016); *General Dynamics Corp.* (Feb. 12, 2016); *UnitedHealth Group Inc.* (Feb. 12, 2016); *Western Union Co.* (Feb. 12, 2016).

The Proposal also requests that the Board “enable shareholders, without limits on group size, to aggregate their shares” of common stock to equal the stock ownership requirements to nominate a proxy access nominee. Article II, Section 2.13(d) of the Amended Bylaws provides that a group of up to 20 shareholders may form a group for the purposes of satisfying the ownership threshold for nomination. Even though the Proxy Access Provision does not permit an unlimited number of shareholders to form a group, the Staff has, consistent with the precedent described above, permitted exclusion of proxy access proposals that called for the adoption of proxy access with unlimited aggregation where the company adopted a proxy access provision with aggregation limited to 20 shareholders.

The Proxy Access Provision satisfies the Proposal’s essential objective – providing a shareholder or group of shareholders that have owned 3% or more of Stryker’s common stock continuously for at least three years the ability to include director nominees in Stryker’s annual meeting proxy materials, up to a specified limit. As contemplated in the Proposal’s supporting statement, the Proxy Access Provision “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.” Even with a limit of 20 shareholders that may form a nominating group, Stryker’s Proxy Access Provision satisfies the Proposal’s essential objective. Thus, although proxy access has not been implemented exactly as proposed by the Proponents, Stryker has substantially implemented the Proposal. Accordingly, Stryker believes the Proposal is excludable under Rule 14a-8(i)(10).

V. Conclusion

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

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

Very truly yours,



Marc S. Gerber

Enclosures

cc: Myra K. Young

John Chevedden

James McRitchie

EXHIBIT A

(see attached)

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

Sean C. Etheredge, VP, Corporate Secretary
Stryker Corporation
2825 Airview Boulevard
Kalamazoo, Michigan 4900
Phone: 269 389 7612
Via: Sean.Etheridge@stryker.com
cc: lauren.keller@stryker.com

Dear Mr. Sean Etheridge or current corporate secretary,

I am submitting the attached shareholder proposal, which I support, requesting **Shareholder Proxy Access** for presentation at the next shareholder meeting. I pledge to continue to hold the required amount of stock until after the date of that meeting.

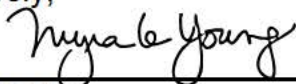
I will meet Rule 14a-8 requirements including the continuous ownership of the required stock until after the date of the next shareholder meeting. I have owned the stock continuously since January 2, 2019. My submitted format, with the shareholder-supplied emphasis and graphic, is intended to be used for definitive proxy publication.

I am available to meet with the Company representative via phone on November 30 at 11:30am, 12:30pm Pacific, or at another time that is mutually convenient to discuss the proposal.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including negotiations and presentation at the forthcoming shareholder meeting *but not with regard to modification, which will require my approval*. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden [REDACTED] ^{PII} [REDACTED] to facilitate prompt communication. James McRitchie, my husband, is hereby assigned as Mr. Chevedden's backup.

Your consideration and that of the Board of Directors is appreciated in support of the long-term performance of our company. You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED] ^{PII} [REDACTED] with a cc to jm@corpgov.net. That will prompt me to request the required letter from my broker and to submit it to the Company.

Sincerely,



Myra K. Young

November 14, 2021

Date

[SYK: Rule 14a-8 Proposal, November 14, 2021]

[This line and any line above it – *Not* for publication. *Proposal number to be assigned by Company.]

ITEM 4* — Shareholder Proxy Access



Resolved: Shareholders of Stryker Corporation (“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,¹ 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*² 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. Two of 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.

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

² <https://ssrn.com/abstract=2635695>

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.³ 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.”⁴

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

Enhance Shareholder Value, Vote FOR Shareholder Proxy Access – Proposal [4*]

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

The graphic included above is intended to be published with the rule 14a-8 proposal. It would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy regarding this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [16].

Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

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

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

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

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

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

■ Myra K. Young and James McRitchie

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

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

I also take this opportunity to remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. SLB 14L Section F, <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Sean Etheridge

Vice President, Corporate Secretary

2825 Airview Boulevard
Kalamazoo, MI 49002 USA
P 269 389 7612
C 269 491 8463
www.stryker.com

November 17, 2021

BY EMAIL

John Chevedden

PII



RE: Notice of Deficiency

Dear Mr. Chevedden:

I am writing to acknowledge receipt of the shareholder proposal (the “Proposal”) submitted by Myra K. Young (the “Proponent”) to Stryker Corporation (“Stryker”) pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, for inclusion in Stryker’s proxy materials for the 2022 Annual Meeting of Shareholders (the “Annual Meeting”).

Under Rule 14a-8, in order to be eligible to submit a proposal for the Annual Meeting, a proponent must have continuously held:

- at least \$2,000 in market value of Stryker common stock for at least three years, preceding and including the date that the proposal was submitted;
- at least \$15,000 in market value of Stryker common stock for at least two years, preceding and including the date that the proposal was submitted; or
- at least \$25,000 in market value of Stryker common stock for at least one year, preceding and including the date that the proposal was submitted.

Alternatively, a proponent must have continuously held at least \$2,000 in market value of Stryker common stock for at least one year as of January 4, 2021 and continuously maintained a minimum investment of at least \$2,000 in market value of Stryker common stock from January 4,

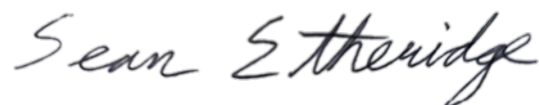
2021 through and including the date that the proposal was submitted. For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

Our records indicate that the Proponent is not a registered holder of Stryker common stock. Please provide a written statement from the record holder of the Proponent's shares (usually a bank or broker) and a participant in the Depository Trust Company (DTC) verifying that, at the time the Proponent submitted the Proposal, which was November 14, 2021, the Proponent had beneficially held the requisite number of shares of Stryker common stock continuously for at least the requisite period preceding and including November 14, 2021.

In order to determine if the bank or broker holding the Proponent's shares is a DTC participant, the Proponent can check the DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/client-center/dtc-directories>. If the bank or broker holding the Proponent's shares is not a DTC participant, the Proponent also will need to obtain proof of ownership from the DTC participant through which the shares are held. The Proponent should be able to find out who this DTC participant is by asking the Proponent's broker or bank. If the DTC participant knows the Proponent's broker or bank's holdings, but does not know the Proponent's holdings, the Proponent can satisfy Rule 14a-8 by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of shares were continuously held for at least the requisite period – one from the Proponent's broker or bank confirming the Proponent's ownership, and the other from the DTC participant confirming the broker or bank's ownership. For additional information regarding the acceptable methods of proving the Proponent's ownership of the minimum number of shares of Stryker common stock, please see Rule 14a-8(b)(2) in Exhibit A.

Rule 14a-8 requires that the documentation be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Stryker reserves the right to seek relief from the Securities and Exchange Commission as appropriate.

Very truly yours,



Sean C. Etheridge
Vice President, Corporate Secretary

Enclosure



11/19/2021

Myra K Young
9295 Yorkship Ct
Elk Grove, CA 95758-7413

Re: Your TD Ameritrade Account Ending in [PII]

Dear Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra Young held and had held continuously since 1/2/19, 17 common shares of Stryker Corporation (SYK) in an account ending in [PII] at TD Ameritrade. Based on the highest selling price within 60 days prior to January 4, 2021, the value of the shares exceeded \$2,000. Further, the value of the shares exceeded \$2,000 within 60 days of November 11, 2021. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads 'Jennifer Hickman' in a cursive script.

Jennifer Hickman
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

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

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TDA 1002212 11/21

EXHIBIT B

(see attached)

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 2, 2021

stryker

STRYKER CORPORATION
(Exact name of registrant as specified in its charter)

<u>Michigan</u> (State of incorporation)	<u>001-13149</u> (Commission File Number)	<u>38-1239739</u> (I.R.S. Employer Identification No.)
<u>2825 Airview Boulevard,</u> (Address of principal executive offices)	<u>Kalamazoo, Michigan</u>	<u>49002</u> (Zip Code)
	<u>(269) 385-2600</u> (Registrant's telephone number, including area code)	

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$.10 Par Value	SYK	New York Stock Exchange
1.125% Notes due 2023	SYK23	New York Stock Exchange
0.250% Notes due 2024	SYK24A	New York Stock Exchange
2.125% Notes due 2027	SYK27	New York Stock Exchange
0.750% Notes due 2029	SYK29	New York Stock Exchange
2.625% Notes due 2030	SYK30	New York Stock Exchange
1.000% Notes due 2031	SYK31	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 5.02 DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS;
COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS

On February 2, 2021, Roch Do veux, DVM, a member of the Board of Directors (the "Board") of Stryker Corporation (the "Company"), informed the Company that he will retire from the Board effective as of the Company's annual shareholders meeting expected to be held on May 5, 2021 (the "Annual Meeting"). Dr. Do veux will continue to serve as a director until the Annual Meeting. Dr. Do veux's decision did not involve any disagreement with the Company.

ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGES IN FISCAL YEAR

As on February 2, 2021, the Board amended and restated the Company's Bylaws (as so amended and restated, the "Bylaws") to, among other things, allow shareholders of record of the Company, holding at least twenty five percent (25%) of the common stock of the Company, the right to call special meetings of the shareholders of the Company and make certain other carrying and conforming changes.

The amendments require that any special meeting request be made in writing and include, among other things, (i) a statement of the specific purpose of the meeting and the reasons for conducting such business at the meeting; (ii) the information that would be required to be set forth in a shareholder's notice of a nomination and/or notice of business proposed to be brought before a meeting pursuant to the Bylaws; (iii) a representation that each requesting shareholder, or one or more representatives of each such shareholder, intends to appear in person or by proxy at the special meeting; (iv) an agreement to notify the Company promptly in the event of any disposition prior to the record date for the special meeting and that any disposition of shares prior to the special meeting shall be deemed a revocation of such special meeting request with respect to such disposed shares; (v) the number of shares of common stock owned of record by each such shareholder; and (vi) documentary evidence that the requesting shareholders in the aggregate own at least twenty five percent (25%) of the common stock of the Company.

The foregoing summary of the amendments to the Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Bylaws, a copy of which is included as Exhibit 3.1 to this report and incorporated by reference herein.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits

- [3.1](#) Amended and Restated Bylaws (adopted and effective February 2, 2021)
- 104 Cover Page Interactive Data File (the cover page XBRL tags are embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

STRYKER CORPORATION
(Registrant)

Date: February 5, 2021

/s/ SEAN C. ETHERIDGE
Sean C. Etheridge
Vice President, Corporate Secretary

BYLAWS

of

STRYKER CORPORATION
a Michigan corporation (the "Corporation")
(As amended through February 2, 2021)

Article 1

Registered office; Registered agent

Section 1.1. Address of Registered Office; Name of Registered Agent. The address of the registered office of the Corporation in the State of Michigan and the name of the registered agent at such address shall be as specified in the most recent statement filed pursuant to the Michigan Business Corporation Act (the "MBCA"). The Corporation may also have other offices at such places within or without the State of Michigan as the Board of Directors may from time to time designate or the business of the Corporation may require.

Section 1.2. Change of Registered Office or Registered Agent. The address of the Corporation's registered office in the State of Michigan or the designation of the registered agent may be changed upon filing of a statement in the manner permitted by the MBCA.

Article II

Meetings of shareholders

Section 2.1. Annual Meeting. The annual meeting of the shareholders of the Corporation for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at such place as the Board of Directors may determine at 2 o'clock p.m. on the third Monday in April of each year or on such other date or at such other time as the Board of Directors may determine.

Section 2.2. Nature of Business at Meetings of Shareholders. No business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 2.3 hereof) may be transacted at an annual meeting of shareholders other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting at the direction of the Board of Directors (or any duly authorized committee thereof), or (c) otherwise properly brought before the annual meeting by any shareholder of the Corporation who (i) is a shareholder of record on the date of the giving of the notice provided for in this Section 2.2 and on the record date for the determination of shareholders entitled to notice of and to vote at such annual meeting and (ii) complies with the notice procedures set forth in this Section 2.2.

For business to be properly brought before an annual meeting by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a shareholder's notice to the Secretary must be received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following

the day on which public disclosure of the date of the annual meeting was made. In no event shall the adjournment or postponement of an annual meeting, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

To be in proper written form, a shareholder's notice to the Secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting a brief description of the business desired to be brought before the annual meeting and the proposed text of any proposal regarding such business (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend these Bylaws, the text of the proposed amendment), and the reasons for conducting such business at the annual meeting, and as to the shareholder giving the notice and any "Shareholder Associated Person" (which for purposes of these Bylaws shall mean (a) any person acting in concert, directly or indirectly, with such shareholder and (b) any person controlling, controlled by or under common control with such shareholder or any Shareholder Associated Person), (i) the name and record address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iii) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation, (v) to the extent known by the shareholder giving the notice, the name and address of any other shareholder supporting the proposal of business on the date of such shareholder's notice, (vi) a description of all arrangements or understandings between or among such persons in connection with (A) the Corporation or (B) the proposal of such business by such shareholder and any material interest in such business, (vii) a representation that the shareholder giving the notice intends to appear in person or by proxy at the annual meeting to bring such business before the meeting and (viii) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies with respect to the proposed business to be brought before the annual meeting pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder. A shareholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.2 shall be true and correct as of the record date for determining the shareholders entitled to receive notice of and to vote at the annual meeting and such update and supplement must be received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the determination of shareholders entitled to receive notice of and to vote at the annual meeting and the date notice of the record date is first publicly disclosed.

No business shall be conducted at a special meeting of shareholders except for such business as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. If the chair of an annual or special meeting determines that business was not properly brought before the meeting in accordance with the procedures set forth in this Section 2.2 (including the provision of the information required pursuant to the immediately preceding paragraph), the chair shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

Nothing contained in this Section 2.2 shall be deemed to affect any rights of shareholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act (or any successor provision of law).

Section 2.3. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Articles of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for

election to the Board of Directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors, (a) at the direction of the Board of Directors (or any duly authorized committee thereof), (b) by any shareholder of the Corporation who (i) is a shareholder of record on the date of the giving of the notice provided for in this Section 2.3 and on the record date for the determination of shareholders entitled to vote at such meeting and (ii) complies with the notice procedures set forth in this Section 2.3 or (c) in the case of an annual meeting, by any Eligible Shareholder (as defined in Section 2.13) who complies with the procedures set forth in Section 2.13 hereof.

For a nomination to be made by a shareholder pursuant to clause (b) of the first paragraph of this Section 2.3, such shareholder must have given timely notice thereof in proper written form to the Secretary. To be timely, a shareholder's notice to the Secretary must be received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within twenty-five (25) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the annual meeting was made; and (b) in the case of a special meeting of shareholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which public disclosure of the date of the special meeting was made. In no event shall the adjournment or postponement of an annual meeting or a special meeting of shareholders called for the purpose of electing directors, or the public announcement of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

To be in proper written form, a shareholder's notice to the Secretary must set forth as to each person whom the shareholder proposes to nominate for election as a director and as to the shareholder giving the notice and any Shareholder Associated Person (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (ii) the name and record address of such person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iv) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (v) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate the loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation, (vi) to the extent known by the shareholder giving the notice, the name and address of any other shareholder supporting the nominee for election or reelection as a director on the date of such shareholder's notice, (vii) a description of all arrangements or understandings between or among such persons pursuant to which the nomination(s) are to be made by the shareholder and any relationship between or among the shareholder giving notice and any Shareholder Associated Person, on the one hand, and each proposed nominee, on the other hand and (viii) a representation that the shareholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected and the completed and signed written representation and agreement (executed by the proposed nominee) required pursuant to Section 3.3 hereof. A shareholder providing notice of any nomination proposed to be made at an annual meeting or special meeting of shareholders called for the purpose of electing directors shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.3 shall be true and correct as of the record date for determining the shareholders entitled to receive notice of and to vote at such annual meeting or special meeting, and such update and supplement must be received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the determination of shareholders entitled to receive notice of and to vote at the annual meeting or special meeting and the date notice of the record date is first publicly disclosed. The Corporation may require any proposed nominee to

furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

If the chair of the meeting determines that a nomination was not made in accordance with the foregoing procedures (including the provision of the information required pursuant to the immediately preceding paragraph), the chair shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 2.4. Special Meetings.

(a) Special meetings of shareholders may be called at any time by the Chair of the Board, the Chief Executive Officer, the President, or by order of the Board of Directors. A special meeting shall be called by the Chief Executive Officer in accordance with Section 2.4(b). Subject to Section 2.4(b), special meetings of shareholders shall be held at such place and on such date and at such time as shall be designated in the notice of meeting.

(b) Subject to the provisions of this Section 2.4(b) and all other applicable sections of these Bylaws, a special meeting shall be called by the Chief Executive Officer upon written request (a "Special Meeting Request") of one or more record holders of shares of common stock of the Corporation representing not less than twenty-five percent (25%) of the Corporation's issued and outstanding shares of common stock (the "Requisite Percentage"). The Board of Directors shall determine in good faith whether all requirements set forth in this Section 2.4(b) have been satisfied and such determination shall be binding on the Corporation and its shareholders.

(i) A Special Meeting Request must be delivered to the attention of the Secretary at the principal executive offices of the Corporation. A Special Meeting Request shall be valid only if it is signed and dated by each shareholder of record submitting the Special Meeting Request, or such shareholder's duly authorized agent (each, a "Requesting Shareholder"), collectively representing the Requisite Percentage, and includes (A) a statement of the specific purpose(s) of the special meeting and the reasons for conducting such business at the special meeting; (B) as to any director nominations proposed to be presented at the special meeting, and any matter (other than a director nomination) proposed to be conducted at the special meeting, and as to each Requesting Shareholder, the information, statements, representations, agreements and other documents that would be required to be set forth in or included with a shareholder's notice of a nomination pursuant to Section 2.3 and/or a shareholder's notice of business proposed to be brought before a meeting pursuant to Section 2.2, as applicable; (C) a representation that each Requesting Shareholder, or one or more representatives of each such shareholder, intends to appear in person or by proxy at the special meeting to present the proposal(s) or business to be brought before the special meeting; (D) an agreement by each Requesting Shareholder to notify the Corporation promptly in the event of any disposition prior to the record date for the special meeting of shares of common stock of the Corporation owned of record and an acknowledgement that any such disposition shall be deemed to be a revocation of such Special Meeting Request with respect to such disposed shares; (E) the number of shares of common stock owned of record by each such Requesting Shareholder; and (F) documentary evidence that the Requesting Shareholders in the aggregate own the Requisite Percentage as of the date on which the Special Meeting Request is delivered to the Secretary. In addition, the Requesting Shareholders shall (x) further update and supplement the information provided in the Special Meeting Request, if necessary, so that all information provided or required to be provided therein shall be true and correct as of the record date for the special meeting, and such update and supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the record date) shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the special meeting and the date notice of the record date is first publicly disclosed and (y) promptly provide any other information reasonably requested by the Corporation.

(ii) A Special Meeting Request shall not be valid, and a special meeting requested by shareholders shall not be held, if (A) the Special Meeting Request does not comply with this Section 2.4(b); (B) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law (as determined in good faith by the Board of Directors); (C) the Special Meeting Request is delivered during the period commencing one hundred twenty (120) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the earlier of (x) the date of the next annual meeting and (y) thirty (30) days after the first anniversary of the date of the previous annual meeting; (D) an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item"), other than the election of directors, was presented at an annual meeting or special meeting held not more than twelve (12) months before the Special Meeting Request is delivered; (E) a Similar Item was presented at an annual meeting or special meeting held not more than one hundred twenty (120) days before the Special Meeting Request is delivered (and, for purposes of this clause (E), the election of directors shall be deemed to be a "Similar Item" with respect to all items of business involving the election or removal of directors, changing the size of the Board of Directors and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors); (F) a Similar Item is included in the Corporation's notice of meeting as an item of business to be brought before an annual meeting or special meeting that has been called but not yet held or that is called for a date within one hundred twenty (120) days of the receipt by the Corporation of a Special Meeting Request; or (G) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act, or other applicable law.

(iii) Special meetings called pursuant to this Section 2.4(b) shall be held at such place, on such date, and at such time as the Board of Directors shall fix; provided, however, that the special meeting shall not be held more than one hundred twenty (120) days after receipt by the corporation of a valid Special Meeting Request.

(iv) The Requesting Shareholders may revoke a Special Meeting Request by written revocation delivered to the Secretary at the principal executive offices of the Corporation at any time prior to the special meeting. If, at any point following the earliest dated Special Meeting Request, the unrevoked requests from Requesting Shareholders (whether by specific written revocation or deemed revocation pursuant to clause (D) of Section 2.4(b) (i)), represent in the aggregate less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the special meeting.

(v) In determining whether a special meeting has been requested by the Requesting Shareholders representing in the aggregate at the least the Requisite Percentage, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (A) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board of Directors (which, if such purpose is the election or removal of directors, changing the size of the Board of Directors and/or the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors, will mean that the exact same person or persons are proposed for election or removal in each relevant Shareholder Meeting Request), and (B) such Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) days of the earliest dated Special Meeting Request.

(vi) If none of the Requesting Shareholders appear or send a duly authorized agent to present the business to be presented for consideration specified in the Special Meeting Request, the Corporation need not present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

(vii) Business transacted at any special meeting called pursuant to this Section 2.4(b) shall be limited to (A) the purpose(s) stated in the valid Special Meeting Request received from the Requisite Percentage of record holders, and (B) any additional matters that the Board of Directors determines to include in the Corporation's notice of the special meeting.

Section 2.5. Notice of Meetings. Written notice of each annual and special meeting of shareholders, stating the time, place and purposes thereof, shall be given not less than ten (10) or more than sixty (60) days before the date of such meeting to each shareholder of record entitled to vote at the meeting. Such notice may be given personally, by mail or by a form of electronic transmission to which the shareholder has consented. If a shareholder or proxy holder may be present and vote at a meeting by remote communication, the means of remote communication allowed shall be included in the notice of the meeting.

Section 2.6. Participation by Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, shareholders and proxy holders not physically present at a meeting of shareholders may participate in a meeting of shareholders by conference telephone or other means of remote communication through which all persons participating in the meeting may communicate with the other participants and shall be considered present in person and may vote at the meeting, whether such meeting is held at a designated place or solely by means of remote communication, provided that (a) the Corporation implements reasonable measures to verify that each person considered present and permitted to vote at the meeting by means of remote communication is a shareholder or proxy holder; (b) the Corporation implements reasonable measures to provide each shareholder and proxy holder a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; (c) if any shareholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of the vote or other action shall be maintained by the Corporation; and (d) all participants are advised of the means of remote communication and the names of the participants in the meeting are divulged to all participants.

Section 2.7. List of Shareholders Entitled to Vote. The officer or agent who has charge of the stock transfer books of the Corporation shall make and certify a complete list, based upon the record date for a meeting of shareholders determined pursuant to Section 5.8 hereof, of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged alphabetically within each class and series, with the address of and the number of shares held by each shareholder. Such list shall be produced at the time and place of the meeting and may be inspected by any shareholder during the entire meeting. If a meeting of shareholders is held solely by means of remote communication, then the list shall be open to the examination of any shareholder during the entire meeting by posting the list on a reasonably accessible electronic network and the information required to access the list shall be provided with the notice of the meeting.

Such list shall be prima facie evidence as to who are the shareholders entitled to examine the list or to vote in person or by proxy at the meeting.

Section 2.8. Adjourned Meetings and Notice Thereof. Any meeting of shareholders may be adjourned to another time or place, and the Corporation may transact at any adjourned meeting only business that could have been transacted at the original meeting unless notice of the adjourned meeting is given. Notice need not be given of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, unless after the adjournment the Board of Directors fixes a new record date for the adjourned meeting. If notice of an adjourned meeting is given, such notice shall be given to each shareholder of record entitled to vote at the adjourned meeting in the manner prescribed in these Bylaws for the giving of notice of meetings. A shareholder or proxy holder may be present and vote at the adjourned meeting by means of a remote communication if he or she was permitted to be present and vote by that means of remote communication in the original meeting notice.

Section 2.9. Quorum. At any meeting of shareholders, except as otherwise provided in the MBCA, the holders of record of shares entitled to cast a majority of the votes at a meeting constitute a quorum at the meeting. The shareholders present in person or by proxy at such meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. Whether or not a quorum is present, the meeting may be adjourned by a vote of the shares present. When the holders of a class or series of shares are entitled to vote separately on an item of business, this Section 2.9 applies in determining the presence of a quorum of such class or series for transaction of the item of business.

Section 2.10. Voting; Proxies. At any meeting of shareholders each outstanding share of stock having voting power shall be entitled to one vote on each matter submitted to vote at such meeting, unless otherwise provided in the Articles of Incorporation. A vote may be cast either orally or in writing and otherwise as provided in these Bylaws. If an action other than the election of directors is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast by the holders of shares entitled to vote on the action, unless a greater vote is required by the MBCA. Abstaining from a vote or submitting a ballot marked "abstain" with respect to an action is not a vote cast on that action. Except as otherwise provided in the Articles of Incorporation, directors shall be elected by a plurality of the votes cast at an election.

Each shareholder entitled to vote at a meeting of shareholders may authorize another person or persons to act for him or her by proxy. Without limiting the manner in which a shareholder may authorize another person or persons to act for him or her as proxy, the following methods constitute a valid means by which a shareholder may grant authority to another person to act as proxy: (a) the execution of a writing authorizing another person or persons to act for the shareholder as proxy, which may be accomplished by the shareholder or by an authorized officer, director, employee, or agent signing the writing or causing his or her signature to be affixed to the writing by any reasonable means including, but not limited to, facsimile signature; and (b) transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will hold the proxy or to a proxy solicitation firm, proxy support service organization or similar agent fully authorized by the person who will hold the proxy to receive that transmission. Any telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder. If a telegram, cablegram or other electronic transmission is determined to be valid, the inspectors of election, or, if there are no inspectors, the persons making the determination shall specify the information upon which they relied. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The authority of the holder of a proxy to act is not revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of the incompetence or death is received by the officer or agent responsible for maintaining the list of shareholders. A shareholder whose shares are pledged shall be entitled to vote the shares until the shares have been transferred into the name of the pledgee or a nominee of the pledgee. A person holding shares in a representative or fiduciary capacity may vote such shares without a transfer of such shares into such person's name.

In advance of any meeting of shareholders, the Board of Directors may appoint any persons, other than nominees for office, as inspectors of election to act at such meeting or any adjournment thereof. The number of inspectors shall be either one or three. If the Board of Directors so appoints either one or three inspectors, that appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the Chair of the Board, or, in the absence of the Chair of the Board, the Chief Executive Officer or, in the absence of both the Chair and Chief Executive Officer, the President may make such appointment at the meeting. Unless otherwise prescribed by applicable law, the duties of such inspectors shall include: determining the number of shares of stock and the voting power of each share, the shares of stock represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 2.11. Fixing of Record Dates. The Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of any meeting of shareholders, nor more than sixty (60) days prior to any other action, for the purpose of determining shareholders entitled to notice of and to vote at such meeting of shareholders or any adjournment thereof, or to express consent or dissent from a proposal without a meeting, or to receive payment or any dividend or allotment of any rights or for the purpose of any other action.

If no record date is fixed by the Board of Directors, the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be the close of business on the day next

preceding the day on which notice is given, or if no notice is given, the day next preceding the day on which the meeting is held, and the record date for determining shareholders for any other purpose shall be the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting, unless the Board of Directors fixes a new record date for the adjourned meeting.

Section 2.12. Conduct of Meetings. At each meeting of shareholders, the Chair of the Board or, in the absence of the Chair of the Board, the Chief Executive Officer or, in the absence of both the Chair and Chief Executive Officer, the President or such other person designated by the Board of Directors shall preside and act as the chair of the meeting. The chair shall determine the order of business, may adjourn any meeting from time to time and shall have the authority to establish rules for the conduct of the meeting, which may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to shareholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 2.13. Proxy Access for Director Nominations.

(a) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of shareholders, subject to the provisions of this Section 2.13, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by or at the direction of the Board of Directors (or any duly authorized committee thereof), the name, together with the Required Information (as defined below), of any person nominated for election to the Board of Directors by an Eligible Shareholder pursuant to and in accordance with this Section 2.13 (a "Shareholder Nominee"). For purposes of this Section 2.13, the "Required Information" that the Corporation will include in its proxy statement is (i) the information provided to the Secretary concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in the Corporation's proxy statement pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder and (ii) if the Eligible Shareholder so elects, a Supporting Statement (as defined in Section 2.13(h)). For the avoidance of doubt, nothing in this Section 2.13 shall limit the Corporation's ability to solicit against any Shareholder Nominee or include in its proxy materials the Corporation's own statements or other information relating to any Eligible Shareholder or Shareholder Nominee, including any information provided to the Corporation pursuant to this Section 2.13. Subject to the provisions of this Section 2.13, the name of any Shareholder Nominee included in the Corporation's proxy statement for an annual meeting of shareholders shall also be set forth on the form of proxy distributed by the Corporation in connection with such annual meeting.

(b) In addition to any other applicable requirements, for a nomination to be made by an Eligible Shareholder pursuant to this Section 2.13, the Eligible Shareholder must have given timely notice thereof (a "Notice of Proxy Access Nomination") in proper written form to the Secretary and must expressly request in the Notice of Proxy Access Nomination to have such nominee included in the Corporation's proxy materials pursuant to this Section 2.13. To be timely, a Notice of Proxy Access Nomination must be received by the Secretary at the principal executive offices of the Corporation not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the anniversary of the date that the Corporation first distributed its proxy statement to shareholders for the immediately preceding annual meeting of shareholders; provided, however, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, to be timely, the Notice of Proxy Access Nomination must be received by the Secretary at the principal executive offices of the Corporation not more than one hundred sixty-five (165) days prior to the date of such annual meeting and not later than the close of business on the later of (x) the one hundred thirty-fifth (135th) day prior to the date of such annual meeting or (y) the tenth (10th) day following the day on which public disclosure of the

date of the annual meeting was made. In no event shall the adjournment or postponement of an annual meeting, or the public disclosure of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a Notice of Proxy Access Nomination pursuant to this Section 2.13.

(c) The maximum number of Shareholder Nominees nominated by all Eligible Shareholders that will be included in the Corporation's proxy materials with respect to an annual meeting of shareholders shall not exceed the greater of (i) two (2) or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 2.13 (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below twenty percent (20%) (such greater number, as it may be adjusted pursuant to this Section 2.13(c), the "Permitted Number"). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In addition, the Permitted Number shall be reduced by (i) the number of individuals who will be included in the Corporation's proxy materials as nominees recommended by the Board of Directors pursuant to an agreement, arrangement or understanding with a shareholder or group of shareholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of stock from the Corporation by such shareholder or group of shareholders) and (ii) the number of directors in office as of the Final Proxy Access Nomination Date who were included in the Corporation's proxy materials as Shareholder Nominees for any of the two (2) preceding annual meetings of shareholders (including any persons counted as Shareholder Nominees pursuant to the immediately succeeding sentence) and whose re-election at the upcoming annual meeting is being recommended by the Board of Directors. For purposes of determining when the Permitted Number has been reached, any individual nominated by an Eligible Shareholder for inclusion in the Corporation's proxy materials pursuant to this Section 2.13 whose nomination is subsequently withdrawn or whom the Board of Directors decides to nominate for election to the Board of Directors shall be counted as one of the Shareholder Nominees. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 2.13 shall rank such Shareholder Nominees based on the order in which the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the Corporation's proxy materials in the event that the total number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.13 exceeds the Permitted Number. In the event that the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 2.13 exceeds the Permitted Number, the highest ranking Shareholder Nominee who meets the requirements of this Section 2.13 from each Eligible Shareholder will be selected for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of common stock of the Corporation each Eligible Shareholder disclosed as Owned in its Notice of Proxy Access Nomination. If the Permitted Number is not reached after the highest ranking Shareholder Nominee who meets the requirements of this Section 2.13 from each Eligible Shareholder has been selected, then the next highest ranking Shareholder Nominee who meets the requirements of this Section 2.13 from each Eligible Shareholder will be selected for inclusion in the Corporation's proxy materials, and this process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation shall not be required to include any Shareholder Nominees in its proxy materials pursuant to this Section 2.13 for any meeting of shareholders for which the Secretary receives a notice (whether or not subsequently withdrawn) that a shareholder intends to nominate one or more persons for election to the Board of Directors pursuant to clause (b) of the first paragraph of Section 2.3 hereof.

(d) An "Eligible Shareholder" is a shareholder or group of no more than twenty (20) shareholders (counting as one shareholder, for this purpose, any two (2) or more funds that are part of the same Qualifying Fund Group (as defined below)) that (i) has Owned (as defined in Section 2.13(e)) continuously for at least three (3) years (the "Minimum Holding Period") a number of shares of common stock of the Corporation equal to no less than the Required Shares (as defined below), (ii) continues to Own the Required Shares through the date of the annual meeting and (iii) meets all other requirements of this Section 2.13. "Required Shares" means a number of shares of common stock of the Corporation that represents at least three percent (3%) of

the outstanding shares of common stock of the Corporation as of the date the Notice of Proxy Access Nomination is received at the principal executive offices of the Corporation in accordance with this Section 2.13. A “Qualifying Fund Group” means two (2) or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a “group of investment companies” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended. Whenever the Eligible Shareholder consists of a group of shareholders (including a group of funds that are part of the same Qualifying Fund Group), (i) each provision in this Section 2.13 that requires the Eligible Shareholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each shareholder (including each individual fund) that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has Owned continuously throughout the Minimum Holding Period in order to meet the three percent (3%) Ownership requirement of the “Required Shares” definition) and (ii) a breach of any obligation, agreement or representation under this Section 2.13 by any member of such group shall be deemed a breach by the Eligible Shareholder. No shareholder may be a member of more than one group of shareholders constituting an Eligible Shareholder with respect to any annual meeting.

(e) For purposes of this Section 2.13, a shareholder shall be deemed to “Own” and have “Ownership” of only those outstanding shares of common stock of the Corporation as to which the shareholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (A) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, (B) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell, or (C) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar instrument or agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such shareholder’s or its affiliates’ full right to vote or direct the voting of any such shares and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. A shareholder shall “Own” shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A shareholder’s Ownership of shares shall be deemed to continue during any period in which (x) the shareholder has loaned such shares, provided that the shareholder has the power to recall such loaned shares on five (5) business days’ notice and includes in the Notice of Proxy Access Nomination an agreement that it (A) will promptly recall such loaned shares upon being notified that any of its Shareholder Nominees will be included in the Corporation’s proxy materials and (B) will continue to hold such recalled shares through the date of the annual meeting or (y) the shareholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. The terms “Owned,” “Owning” and other variations of the word “Own” shall have correlative meanings. Whether outstanding shares of common stock of the Corporation are “Owned” for these purposes shall be decided by the Board of Directors.

(f) To be in proper written form, a Notice of Proxy Access Nomination must set forth or be accompanied by the following:

(i) a statement by the Eligible Shareholder (A) setting forth and certifying as to the number of shares it Owns and has Owned continuously throughout the Minimum Holding Period, (B) agreeing to continue to Own the Required Shares through the date of annual meeting and (C) indicating whether it intends to continue to own the Required Shares for at least one year following the annual meeting;

(ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven (7) calendar days prior to the date the Notice of Proxy Access Nomination is received at the principal executive offices of the Corporation, the Eligible Shareholder Owns, and has Owned continuously throughout the Minimum Holding Period, the Required Shares, and the Eligible Shareholder's agreement to provide, within five (5) business days following the later of the record date for the determination of shareholders entitled to receive notice of and to vote at the annual meeting and the date notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Shareholder's continuous Ownership of the Required Shares through the record date;

(iii) a copy of the Schedule 14N that has been or is concurrently being filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;

(iv) the information, representations, agreements and other documents that would be required to be set forth in or included with a shareholder's notice of nomination made pursuant to clause (b) of the first paragraph of Section 2.3 hereof;

(v) a representation that the Eligible Shareholder (A) did not acquire, and is not holding, any securities of the Corporation for the purpose or with the intent of changing or influencing control of the Corporation, (B) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Shareholder Nominee(s) it is nominating pursuant to this Section 2.13, (C) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a nominee of the Board of Directors, (D) has not distributed and will not distribute to any shareholder of the Corporation any form of proxy for the annual meeting other than the form distributed by the Corporation, (E) has complied and will comply with all laws, rules and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting and (F) has provided and will provide facts, statements and other information in all communications with the Corporation and its shareholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(vi) an undertaking that the Eligible Shareholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the Corporation or out of the information that the Eligible Shareholder provided to the Corporation, (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages 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 any nomination submitted by the Eligible Shareholder pursuant to this Section 2.13 or any solicitation or other activity in connection therewith and (C) file with the Securities and Exchange Commission any solicitation or other communication with the shareholders of the Corporation relating to the meeting at which its Shareholder Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act;

(vii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders, the designation by all group members of one member of the group that is authorized to receive communications, notices and inquiries from the Corporation and to act on behalf of all members of the group with respect to all matters relating to the nomination under this Section 2.13 (including withdrawal of the nomination); and

(viii) in the case of a nomination by an Eligible Shareholder consisting of a group of shareholders in which two (2) or more funds are intended to be treated as one shareholder for purposes of qualifying as an

Eligible Shareholder, documentation reasonably satisfactory to the Corporation that demonstrates that the funds are part of the same Qualifying Fund Group.

(g) In addition to the information required or requested pursuant to Section 2.13(f) or any other provision of these Bylaws, (i) the Corporation may require any proposed Shareholder Nominee to furnish any other information (A) that may reasonably be requested by the Corporation to determine whether the Shareholder Nominee would be independent under the rules and listing standards of the securities exchanges upon which the stock of the Corporation is listed or traded, any applicable rules of the Securities and Exchange Commission or any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors (collectively, the "Independence Standards"), (B) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Shareholder Nominee or (C) that may reasonably be requested by the Corporation to determine the eligibility of such Shareholder Nominee to be included in the Corporation's proxy materials pursuant to this Section 2.13 or to serve as a director of the Corporation, and (ii) the Corporation may require the Eligible Shareholder to furnish any other information that may reasonably be requested by the Corporation to verify the Eligible Shareholder's continuous Ownership of the Required Shares throughout the Minimum Holding Period and through the date of the annual meeting.

(h) For each of its Shareholder Nominees, the Eligible Shareholder may, at its option, provide to the Secretary, at the time the Notice of Proxy Access Nomination is provided, a written statement for inclusion in the Corporation's proxy materials, not to exceed five hundred (500) words, in support of such Shareholder Nominee's candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Shareholder (including any group of shareholders together constituting an Eligible Shareholder) in support of each of its Shareholder Nominee(s). Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law, rule or regulation.

(i) In the event that any information or communications provided by an Eligible Shareholder or a Shareholder Nominee to the Corporation or its shareholders is not, when provided, or thereafter ceases to be, true and correct in all material respects or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such Eligible Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the Secretary of any such defect and of the information that is required to correct any such defect. Without limiting the foregoing, an Eligible Shareholder shall provide immediate notice to the Corporation if the Eligible Shareholder ceases to Own a number of shares of the Corporation's common stock at least equal to the Required Shares prior to the date of the annual meeting. In addition, any person providing any information to the Corporation pursuant to this Section 2.13 shall further update and supplement such information, if necessary, so that all such information shall be true and correct as of the record date for determining the shareholders entitled to receive notice of and to vote at the annual meeting, and such update and supplement shall be delivered to or be mailed and received by the Secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the determination of shareholders entitled to receive notice of and to vote at the annual meeting and the date notice of the record date is first publicly disclosed. For the avoidance of doubt, no notification, update or supplement provided pursuant to this Section 2.13(i) or otherwise shall be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the Corporation relating to any such defect (including the right to omit a Shareholder Nominee from its proxy materials pursuant to this Section 2.13).

(j) Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation shall not be required to include in its proxy materials, pursuant to this Section 2.13, any Shareholder Nominee (i) who would not be an independent director under the Independence Standards, (ii) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these Bylaws, the Articles of Incorporation, the rules and listing standards of the securities exchanges upon which the stock of the Corporation is listed or traded, or any applicable law, rule or regulation, (iii) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act

of 1914, (iv) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years, (v) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended, or (vi) who shall have provided any information to the Corporation or its shareholders that was untrue in any material respect or that omitted to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

(k) Notwithstanding anything to the contrary set forth herein, if (i) a Shareholder Nominee and/or the applicable Eligible Shareholder breaches any of its agreements or representations or fails to comply with any of its obligations under this Section 2.13 or (ii) a Shareholder Nominee otherwise becomes ineligible for inclusion in the Corporation's proxy materials pursuant to this Section 2.13, or dies, becomes disabled or otherwise becomes ineligible or unavailable for election at the annual meeting, in each case as determined by the Board of Directors (or any duly authorized committee thereof) or the chair of the annual meeting, (A) the Corporation may omit or, to the extent feasible, remove the information concerning such Shareholder Nominee and the related Supporting Statement from its proxy materials and/or otherwise communicate to its shareholders that such Shareholder Nominee will not be eligible for election at the annual meeting, (B) the Corporation shall not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Shareholder or any other Eligible Shareholder and (C) the chair of the annual meeting shall declare such nomination to be invalid and such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(l) Any Shareholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of shareholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least twenty-five percent (25%) of the votes cast in favor of such Shareholder Nominee's election, will be ineligible to be a Shareholder Nominee pursuant to this Section 2.13 for the next two (2) annual meetings of shareholders. For the avoidance of doubt, the immediately preceding sentence shall not prevent any shareholder from nominating any person to the Board of Directors pursuant to clause (b) of the first paragraph of Section 2.3 hereof.

(m) This Section 2.13 provides the exclusive method for a shareholder to include nominees for election to the Board of Directors in the Corporation's proxy materials.

Article III

Board of Directors

Section 3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided in the MBCA.

Section 3.2. Number of Directors. The Board of Directors of the Corporation shall consist of one or more members. The exact number of directors that shall constitute the whole Board of Directors shall be fixed from time to time by resolution adopted by a majority of the whole Board of Directors. The Board of Directors may, by resolution adopted by a majority of the whole Board of Directors, from time to time change the number of directors constituting the whole Board of Directors, provided, however, that in no event will a decrease in the number of directors shorten the term of any incumbent director.

Section 3.3. Qualification. Directors need not be residents of the State of Michigan nor shareholders of the Corporation. In addition, in order to be eligible for election or re-election as a director of the Corporation, a person must deliver to the Secretary at the principal executive offices of the Corporation a written representation and agreement that such person (a) is not and will not become a party to (i) any arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how

such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation in such representation and agreement or (ii) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with such person's nomination, candidacy, service or action as a director that has not been disclosed to the Corporation in such representation and agreement, (c) would be in compliance, if elected as a director of the Corporation, and will comply with the Corporation's code of conduct, corporate governance guidelines, securities trading policies and any other policies or guidelines of the Corporation applicable to directors and (d) will make such other acknowledgments, enter into such agreements and provide such information as the Board of Directors requires of all directors, including promptly submitting all completed and signed questionnaires required of the Corporation's directors.

Section 3.4. Election. The directors of the Corporation shall be elected in each year at the annual meeting of shareholders, except as provided in Section 3.7 hereof.

Section 3.5. Term. Each director shall hold office until the succeeding annual meeting and until his or her successor is duly elected and qualified or until his or her resignation or removal.

Section 3.6. Resignation and Removal. Any director may resign at any time upon written notice to the Corporation. The resignation of any director shall take effect upon receipt of notice thereof or at a later time specified in such notice. Any director may be removed at any time, with or without cause, by the vote of the holders of a majority of the shares entitled to vote at an election of directors.

Section 3.7. Vacancies. Vacancies in the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors may be filled by the shareholders or by the Board of Directors. If the directors remaining in office constitute fewer than a quorum, they may fill vacancies by the affirmative vote of a majority of all the directors remaining in office.

Section 3.8. Regulations. The Board of Directors may adopt such rules and regulations for the conduct of the business and management of the Corporation that are not inconsistent with the MBCA or the Articles of Incorporation or these Bylaws as the Board of Directors may deem proper.

Section 3.9. Annual Meeting of Board of Directors. An annual meeting of the Board of Directors shall be called and held for the purpose of organization, election of officers and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of shareholders, no notice of the annual meeting of the Board of Directors need be given. Otherwise such annual meeting shall be held at such time (not more than thirty days after the annual meeting of shareholders) and place as may be specified in a notice of the meeting.

Section 3.10. Regular Meetings. Regular meetings of the Board of Directors shall be held at the time and place as shall from time to time be determined by the Board of Directors. After there has been such determination and notice thereof has been given to each member of the Board of Directors, no further notice shall be required for any such regular meeting.

Section 3.11. Special Meetings. Special meetings of the Board of Directors may be called from time to time by the Chair of the Board, the Chief Executive Officer, or the President and shall be called by the Chair of the Board or the Secretary upon the written request of a majority of the whole Board of Directors directed to the Chair of the Board or the Secretary. Notice of any special meeting of the Board of Directors, stating the time and place of such special meeting, shall be given to each director. Such notice shall be given personally, by telephone, by overnight courier or by a form of electronic transmission not less than forty-eight (48) hours before the time of the meeting (or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances).

Section 3.12. Committees of Directors. The Board of Directors may 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. Each committee and each member thereof shall serve at the pleasure of the Board of Directors.

Section 3.13. Powers and Duties of Committees. Any committee, to the extent provided in the resolution or resolutions creating such committee, shall have and may exercise all powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, subject to any limitation by the MBCA or these Bylaws. No such committee shall have the power or authority with regard to amending the Articles of Incorporation (except that a committee may prescribe the relative rights and preferences of the shares of series of preferred stock permitted to be fixed by the Board of Directors in accordance with the Articles of Incorporation), adopting an agreement of merger, conversion, or share exchange, recommending to the shareholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the shareholders a dissolution of the Corporation or a revocation of a dissolution, amending these Bylaws or filling vacancies on the Board of Directors or fixing compensation of the directors for serving on the Board of Directors or on a committee thereof and, unless a resolution of the Board of Directors so provides, declaring a distribution or dividend or authorizing the issuance of shares.

Each committee may adopt its own rules of procedure and may meet at stated times or on such notice as such committee may determine and, unless otherwise provided in a resolution of the Board of Directors, may designate one or more subcommittees, each of which shall consist of one or more members, to which all or part of the power and authority of the committee may be delegated. Each committee shall keep regular minutes of its proceedings and report the same to the Board of Directors.

Section 3.14. Quorum and Voting. A majority of the members of the Board of Directors then in office and, unless the resolution of the Board of Directors establishing the committee provides otherwise, of the members of a committee constitutes a quorum for the transaction of business by the Board of Directors or such committee. A director interested in a contract or transaction may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee that authorizes the contract or transaction. In the absence of a quorum, a majority of the directors or of a committee present may adjourn a meeting of the Board of Directors or such committee until a quorum shall be present.

Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other means of remote communication through which all persons participating in the meeting can communicate with the other participants, and participation in such a meeting shall constitute presence in person at such meeting.

The vote of the majority of the directors present at a meeting at which a quorum is present constitutes the action of the Board of Directors or of a committee unless the vote of a greater number is required by the MBCA or, in the case of a committee, the resolution of the Board of Directors establishing the committee; provided, however, that amendment of the Bylaws by the Board requires the vote of not less than a majority of the directors then in office.

Section 3.15. Action Without Meeting. Action required or permitted to be taken under authorization voted at a meeting of the Board of Directors or of any committee thereof may be taken without a meeting if, before or after the action, all members of the Board of Directors then in office or of such committee, as the case may be, consent to the action in writing or by electronic transmission. The consents shall be filed with the minutes of proceedings of the Board of Directors or such committee and shall have the same effect as a vote of the Board of Directors or committee for all purposes.

Section 3.16. Director Compensation. Directors may receive such compensation for service on the Board of Directors as the Board may determine. Members of either standing or special committees may be allowed such compensation as the Board of Directors may determine.

Article IV

Officers and Chair of the Board

Section 4.1. Officers. The officers of the Corporation shall be appointed by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Board may, in its discretion, appoint any other officers, including without limitation a Chair of the Board, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, one or more Vice Presidents, Assistant Treasurers, Assistant Secretaries, and any such other officers and agents as it may deem necessary. None of the officers, except the Chair of the Board, if any, need be a director of the Corporation. Any two or more offices may be held by the same person.

Section 4.2. Election of Officers; Term of Office. Officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If any vacancy in any office shall occur or any office shall be newly created, such office may be filled by the Board of Directors. The Board of Directors may delegate to the Chief Executive Officer or the President the power to appoint designated officers. Each officer shall hold office for the term for which he or she is elected or appointed or until his or her successor is duly elected or appointed and qualified or until his or her resignation or removal.

Section 4.3. Resignation and Removal of Officers. Any officer of the Corporation may resign at any time upon written notice to the Corporation. The resignation of any officer shall take effect upon receipt by the Corporation of notice thereof or at a later time specified in such notice. An officer of the Corporation may be removed at any time by the Board of Directors with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed. The election or appointment of any officer does not itself create contract rights.

Section 4.4. Chair of the Board. The Chair of the Board, who may be an officer of the Corporation or may be a non-executive Chair of the Board as determined by the Board of Directors, shall preside at all meetings of shareholders and of the Board of Directors at which he or she is present. The Chair of the Board shall have such other powers and perform such other duties as may be assigned to him or her from time to time by these Bylaws or the Board of Directors. The Chair of the Board may also use the title Chairman or Chairperson and such titles shall be considered to refer to the Chair of the Board.

Section 4.5. Chief Executive Officer. The Chief Executive Officer, subject to the control of the Board of Directors, shall have the final authority over the general policy and business of the Corporation. The Chief Executive Officer shall perform other duties as may be prescribed from time to time by the Board of Directors or these Bylaws. If no Chief Executive Officer is appointed, the duties and powers of the Chief Executive Officer shall be performed by the President.

Section 4.6. President. The President shall, in the absence of the Chair of the Board and the Chief Executive Officer, preside at all meetings of shareholders and of the Board of Directors at which he or she is present. The President shall have general supervision over the business of the Corporation. The President shall have all powers and duties usually incident to the office of the President except as specifically limited by a resolution of the Board of Directors. The President shall have such other powers and perform such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chief Executive Officer.

Section 4.7. Chief Operating Officer. The Chief Operating Officer shall have general charge, control and supervision over the day-to-day operating activities of the Corporation, subject to such limitations and with such other duties and powers as may be imposed or given by the Board of Directors, the Chief Executive Officer, or the President. If no Chief Operating Officer is appointed, the duties and powers of the Chief Operating Officer shall be performed by the Chief Executive Officer or, if no Chief Executive Officer is appointed, by the President.

Section 4.8. Vice President. In the absence or disability of the President or if the office of President be vacant, the Vice Presidents in the order determined by the Board of Directors, or, if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board of Directors at any time to extend or confine such powers and duties or to assign them to others. Any Vice President may have such additional designation in his or her title as the Board of Directors, the Chief Executive Officer, or the President may determine, which may reflect seniority, duties or responsibilities of such Vice President. The Vice Presidents shall generally assist the Chief Executive Officer and the President in such manner as they shall direct. Each Vice President shall have such other powers and perform such other duties as may be assigned to him or her from time to time by the Board of Directors, the Chief Executive Officer, or the President.

Section 4.9. Secretary. The Secretary shall act as Secretary of all meetings of shareholders and of the Board of Directors at which he or she is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of the Corporation and shall have supervision over the care and custody of the records and seal of the Corporation. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Corporation under its seal is duly authorized, and when so affixed may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary except as specifically limited by a resolution of the Board of Directors. The Secretary shall have such other powers and perform such other duties as may be assigned to him or her from time to time by the Board of Directors, the Chief Executive Officer, or the President.

Section 4.10. Treasurer. The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Corporation and shall cause the funds of the Corporation to be deposited in the name of the Corporation in such banks or other depositories as the Board of Directors may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Corporation. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board of Directors. The Treasurer shall have such other powers and perform such other duties as may be assigned to him or her from time to time by the Board of Directors, the Chief Executive Officer, or the President.

Article V

Capital stock

Section 5.1. Issuance of Certificates for Stock. The shares of the Corporation shall be represented by certificates or, if authorized by the Board of Directors, may be issued without certificates. Authorization to issue shares in uncertificated form shall not affect outstanding shares already represented by a certificate until the certificate is surrendered to the Corporation. Unless otherwise determined by the Board of Directors, each shareholder, upon written request to the Secretary of the Corporation, shall be entitled to a certificate or certificates representing the number of shares held by him or her in the Corporation.

Within a reasonable time after the issuance or transfer of uncertificated shares, as long as the same is required by the MBCA, the Corporation shall send to the registered owner thereof a written statement of the designation, relative rights, preferences and limitations of the shares of each class authorized to be issued and the other information required by the MBCA to be set forth in or stated on certificates for stock.

Section 5.2. Signatures on Stock Certificates. Certificates for shares of capital stock of the Corporation shall be signed by, or in the name of the Corporation by, the Chair of the Board, the President or a Vice President and also may be signed by the Secretary, the Treasurer, an Assistant Secretary or an Assistant Treasurer. Any of or all the signatures on the certificate may be a facsimile. In case any officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before such certificate is issued, such

certificate may be issued by the Corporation with the same effect as if such signer were such officer at the date of issue.

Section 5.3. Stock Ledger. A record of all shares of capital stock issued by the Corporation shall be kept by the Secretary or any other officer or employee of the Corporation designated by the Secretary or by any transfer agent appointed pursuant to Section 5.4 hereof. Such record shall show the name and address of the person in which shares of capital stock are registered, the number of shares registered in such person's name, the date of any certificate issued in respect of such shares and, in the case of any certificate that has been cancelled, the date of cancellation.

The Corporation shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to receive dividends thereon, to vote such shares, to receive notice of meetings and for all other purposes. The Corporation shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person whether or not the Corporation shall have express or other notice thereof.

Section 5.4. Regulations Relating to Transfer. The Board of Directors may make such rules and regulations as it may deem expedient, not inconsistent with the MBCA, the Articles of Incorporation or these Bylaws, concerning the issuance, transfer and registration of shares of capital stock of the Corporation. The Board of Directors may appoint, or authorize any principal officer to appoint, one or more transfer agents and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

Section 5.5. Transfers. All transfers of capital stock shall be made on the books of the Corporation only upon delivery to the Corporation or its transfer agent of a written direction of the registered holder of the shares, in person or by such holder's attorney lawfully constituted in writing, and, if such shares are certificated, upon surrender of the certificate or certificates representing such shares duly endorsed.

Section 5.6. Cancellation. Each certificate for capital stock surrendered to the Corporation for exchange or transfer shall be cancelled and no new certificate or certificates or uncertificated shares shall be issued in exchange for any existing certificate, other than pursuant to Section 5.7, until such existing certificate shall have been cancelled.

Section 5.7. Lost Destroyed Stolen and Mutilated Certificates. In the event that any certificate for shares of capital stock of the Corporation shall be mutilated, the Corporation shall issue a new certificate or uncertificated shares in place of such mutilated certificate. In case any such certificate shall be lost or destroyed the Corporation may issue a new certificate for capital stock or uncertificated shares in the place of any such lost or destroyed certificate. The applicant for any substituted certificate or for uncertificated shares shall surrender any mutilated certificate or, in the case of any lost or destroyed certificate, furnish satisfactory proof of such loss, theft or destruction of such certificate and of the ownership thereof. The Corporation may, in its discretion, require the owner of a lost or destroyed certificate, or his or her representative, to furnish to the Corporation a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify the Corporation against any claim that may be made against it on account of the lost or destroyed certificate or the issuance of such new certificate or uncertificated shares in respect thereof.

Article VI

Indemnification

Section 6.1. Indemnification. The Corporation shall indemnify its directors and certain officers as designated by the Board of Directors from time to time to the fullest extent authorized or permitted by law (as now or hereafter in effect) and such right to indemnification shall continue as to a person who has ceased to be a

director or designated officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or designated officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Section 6.1 shall include the right to be paid by the Corporation, promptly as incurred, the reasonable expenses of defending or otherwise participating in any action, suit or proceeding in advance of its final disposition upon receipt of a written undertaking executed by or on behalf of such director or designated officer to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct, if any, required for the indemnification of a person under the circumstances. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to other officers, employees and agents of the Corporation. The rights to indemnification and to the advancement of expenses conferred in this Section 6.1 shall not be exclusive of any other right that any person may have or hereafter acquire under these Bylaws, the Articles of Incorporation, any statute, agreement, vote of shareholders or disinterested directors or otherwise. Any repeal or modification of this Section 6.1 shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or designated officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

Section 6.2. Indemnification Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under applicable law.

Article VII

Miscellaneous provisions

Section 7.1. Corporate Seal. The seal of the Corporation shall be circular in form with the name of the Corporation and the word Michigan in the circumference and the words "Corporate Seal" in the center. The seal may be used by causing it or a facsimile to be affixed, impressed or reproduced in any other manner.

Section 7.2. Fiscal Year. The fiscal year of the Corporation shall be from the 1st day of January to the 31st day of December, inclusive, in each year, or such other twelve consecutive months as the Board of Directors may designate.

Section 7.3. Electronic Transmission. When used in these Bylaws, the term "electronic transmission" shall include any telegram, cablegram, facsimile transmission, communication by electronic mail or other form of communication that does not directly involve the physical transmission of paper, creates a record that may be retained and retrieved by the recipient and may be directly reproduced in paper by the recipient through an automated process.

Section 7.4. Notices and Communications Generally. When a notice is required or permitted to be given by these Bylaws in writing, electronic transmission is written notice. When a notice or other communication is permitted by the MBCA to be transmitted electronically, the notice or other communication is given when electronically transmitted to the person entitled to the notice or communication in a manner authorized by such person.

When a notice or communication is given by mail, it shall be mailed, except as otherwise provided in the MBCA, to the person to whom it is directed at the address designated by him or her for that purpose or, if none is designated, at his or her last known address. The notice or communication is given when deposited, with postage thereon prepaid, in a post office or official depository under the exclusive care and custody of the United States postal service. Notice and any other written report, statement or communication required to be given to shareholders shall be deemed to have been given to all shareholders of record who share an address if notice is given or such other report, statement or communication is delivered in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and in Section 143 of the MBCA.

When a notice or communication is required to be given to a person by the MBCA, the Articles of Incorporation or these Bylaws or otherwise and communication with the person is then unlawful under a statute of Michigan or the United States or a rule, regulation, proclamation or order issued under any such statute, the giving of the notice or communication to such person is not required and there is no duty to apply for a license or other permission to do so.

Section 7.5. Waiver of Notice. Whenever any notice is required to be given under any provision of these Bylaws, a waiver thereof signed by the person or persons entitled to such notice or, in the case of a shareholder, his or her attorney-in-fact or given by electronic transmission, whether before or after the time stated therein for the meeting, shall be deemed equivalent to notice.

A shareholder's attendance at a meeting will result in both of the following: (a) waiver of objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and (b) waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting or promptly upon the director's arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

Section 7.6. Execution of Instruments Contracts etc. Except as otherwise required by law, the Articles of Incorporation or these Bylaws, any contract, conveyance, lease, power of attorney or other agreement, instrument or document may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or person or persons as from time to time may be designated by the Board of Directors or by such officer or officers of the Corporation authorized by the Board of Directors to make such designation.

Section 7.7. Amendment of Bylaws. These Bylaws may be amended or repealed or new bylaws may be adopted by the shareholders or by the vote of not less than a majority of the Board of Directors then in office.

Last Updated February/2021

Corporate Governance

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VIA EMAIL: shareholderproposals@sec.gov

Office of Chief Counsel

Division of Corporation Finance

U.S. Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

cc: Sean.Etheridge@stryker.com, lauren.keller@stryker.com, Marc.Gerber@skadden.com

December 10, 2021

Re: Stryker Corporation

To Whom It May Concern:

This letter is in response to a December 10, 2021, letter by Marc S. Gerber of Skadden, et al, acting as an agent of Stryker Corporation (the "Company" or "Stryker").

Mr. Gerber asserts our shareholder proposal ("Proposal") can be omitted pursuant to Rule 14a-8(i)(10) because Stryker has substantially implemented the Proposal. His no-action request cites a plethora of proposals purported to be similar, where Staff permitted exclusion.

Staff Flexibility

Although Rule 14a-8(j)(2) encourages companies to cite similar fact patterns as support for their position, no-action responses "only reflect informal views regarding the application of Rule 14a-8." The SEC Staff does not "claim to issue 'rulings' or 'decisions' on proposals that companies intend to exclude, and [its] determinations do not and cannot adjudicate the merits of a company's position with respect to a proposal."

Past decisions, while considered, are not precedent setting. Staff can and has used a flexible approach, which is especially important in times of rapidly evolving issues. Staff Legal Bulletin 14L discussed how interpretations over the last four years increasingly deviated from the rules by basing decisions on whether a proposal is overly granular. Going forward, Staff will

focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

The Proposal's resolved clause indicates:

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

As cited in the proposal *Proxy Access in the United States: Revisiting the Proposed SEC Rule*, a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” rising US market capitalization by up to \$140.3 billion.

That estimate was based on proxy access having *no limit* with regard to the number in a participating group. Since that time, the vast majority of companies that have adopted proxy access have limited groups to a maximum of 20 members. As a result, proxy access has only been used once. The anticipated economic benefits of proxy access have failed to materialize.

Mr. Gerber cites *Oshkosh Corp.* (Nov. 4, 2016). Staff permitted exclusion as substantial implementation, even though Oshkosh implemented only three of six proposed changes because the company’s changes “compare favorably with the guidelines of the proposal.” In the case of Stryker, the resolved clause of our proposal explicitly states the following:

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

Our Company wants to deny a vote by shareholders on what is clearly identified as the *most essential* feature of the proxy access proposal. Not only is there no equivalency to *Oshkosh*, we now have a history of shareholders unable to use proxy access because commonly adopted group limits seek to preserve the position of entrenched incumbents. Staff can no longer logically find the company’s changes “compare favorably with the guidelines of the proposal.”

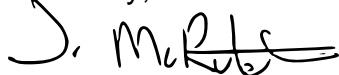
The implication of limiting the number of participants in a proxy access group is easily understood by shareholders and is an appropriate subject for shareholder input. Denying a vote on this and similar proposals has a collective cost of billions of dollars in shareholder value by foreclosing the ability of shareholders to harness free-market forces. The SEC should not sanction the attempt by our Company’s entrenched board to evade market forces that could drive a significant increase in shareholder value. The Company should make its arguments to shareholders in its opposition statement not in a no-action request the Staff.

Conclusion

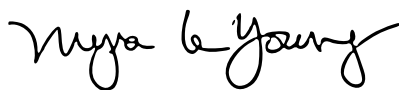
In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with the Stryker Corporation on mutually agreeable terms for withdrawing the Proposal. You can reach James McRitchie by e-mailing [REDACTED].

Sincerely,



James McRitchie
Shareholder Advocate



Myra K. Young

Corporate Governance

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VIA EMAIL: shareholderproposals@sec.gov

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US Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549

cc: Sean.Etheridge@stryker.com, lauren.keller@stryker.com, Marc.Gerber@skadden.com

December 29, 2021

Re: Stryker Corporation

To Whom It May Concern:

This supplements my response of December 10, 2021, to a no-action request on the same day by Marc S. Gerber of Skadden et al, acting as an agent of Stryker Corporation (the "Company" or "Stryker").

Mr. Gerber asserts our shareholder proposal ("Proposal") can be omitted pursuant to Rule 14a-8(i)(10) because Stryker has substantially implemented the Proposal. His no-action request cites a plethora of proposals purported to be similar but are not, where Staff permitted exclusion.

Law firms have been touting no-action letters on "substantial implementation" of proxy access since a batch of decisions was released on February 12, 2016,¹ with more in March 2016. Yet, mysteriously, SEC Staff decided a group limit of twenty represented "substantial implementation," but a group holding 5% failed to meet a 3% threshold requested by the NYC Comptroller at NVR.² Why were these decisions made by Staff instead of shareholders?

14a-8(i)(10) Background

Companies seeking to establish the availability of subsection (i)(10) have the burden of showing both the insubstantiality of any revisions made to the shareholder proposal and the actual implementation of the company alternative.³

¹ https://www.sec.gov/divisions/corpfin/cf-noaction/2016_14a-8.shtml#chrono

² <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/comptrollercityny021216-14a8.pdf>

³ The exclusion originally applied to proposals deemed moot. See Exchange Act Release No. 12999 (Nov. 22, 1976) (noting that mootness "has not been formally stated in Rule 14a- 8 in the past but which has informally been deemed to exist."). In 1983, the Commission determined that a proposal would be "moot" if substantially implemented. Exchange Act Release No. 20091 (August 16, 1983) ("The Commission proposed an interpretative change to permit the omission of proposals that have been 'substantially implemented by the issuer.' While the new interpretative position will add more subjectivity to the application of the provision, the Commission has determined that the previous formalistic application of this provision defeated its purpose."). The rule was changed to reflect this administrative interpretation in 1997. See Exchange Act Release No. 39093 (Sept. 18, 1997) (proposing to alter standard of mootness to "substantially implemented").

Where the shareholder specifies a range of percentages (10% to 25%), Staff has generally agreed the company "substantially" implements the proposal when it selects a percentage within the range, even if at the upper end.⁴ Likewise, the Staff has found substantial implementation when the shareholder proposal includes no percentage⁵ or merely "favors" a particular percentage.⁶

No-action letters granted by SEC Staff beginning March 12, 2016, carved out a new and unsubstantiated definition of "substantially implemented" without the benefit of a rulemaking, public comments, or review by the Commission.

Proxy Access Background

The right to pursue proxy access at any given company was uncontroversial before 1990. In 1980 Unicare Services included a proposal to allow any three shareowners to nominate and place candidates on the proxy. Mobil's shareholders proposed a "reasonable number," while those at Union Oil proposed a threshold of "500 or more shareholders" to place nominees on corporate proxies.

One company argued that placing a minimum threshold on access would discriminate "in favor of large stockholders and to the detriment of small stockholders," violating equal treatment principles.

Early attempts to win proxy access through shareowner resolutions met with the same fate as most resolutions in those days – they failed. But the tides of change turned. A 1987 proposal by Lewis Gilbert to allow shareowners to ratify the choice of auditors won a majority vote at Chock Full of O'Nuts Corporation, and in 1988 Richard Foley's proposal to redeem a poison pill won a majority vote at the Santa Fe Southern Pacific Corporation.

However, in 1990, without public discussion or a rule change, Staff began issuing a series of no-action letters on proxy access proposals. The SEC's about-face may have been prompted by powerful boards and CEOs who feared that "private ordering," through shareowner proposals, was about to begin in earnest.

That about-face was temporarily halted with the decision in *AFSCME v AIG* (2006).⁷ The court found that the prohibition on shareowner elections in Rule 14a-8 applied only to proposals "used to oppose solicitations dealing with an identified board seat in an upcoming election" (also known as contested elections).

⁴ In cases where the staff allowed for the exclusion of a proposal, the shareholder proposal provided a range of applicable percentages and the company selected a percentage within the range. See *Citigroup Inc.* (Feb. 12, 2008) (range of 10% to 25%; company selected 25%); *Hewlett-Packard Co.* (Dec. 11, 2007) (range of 25% or less; company selected 25 %). In *General Dynamics*, the proposal sought a bylaw that would permit shareholders owning 10% of the voting shares to call a special meeting. The management bylaw provided that a single 10% shareholder or a group of shareholders holding 25% could call special meetings. As a result, the provision implemented the proposal for a single shareholder but "differ[ed] regarding the minimum ownership required for a group of stockholders." *General Dynamics Corp.* (Feb. 6, 2009).

⁵ *Borders Group, Inc.* (Mar. 11, 2008) (no specific percentage contained in proposal; company selected 25%); *Allegheny Energy, Inc.* (Feb. 19, 2008) (no percentage stated in proposal; company selected 25%).

⁶ *Johnson & Johnson* (Feb. 19, 2009) (allowing for exclusion where company adopted bylaw setting percentage at 25% and where proposal called for a "reasonable percentage" to call a special meeting and stating that proposal "favors 10%"); *3M Co.* (Feb. 27, 2008) (same).

⁷ <http://www.lawschoolcasebriefs.net/2012/10/afscme-v-aig-inc-case-brief.html>

The more recent about-face by Staff on what constitutes substantial implementation for purposes of Rule 14a-8(i)(10) is similar to the reversal in 1990, which denied proxy access proposals altogether. Before February 12, 2016, Staff concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent. However, Staff did *not* concur that substantial implementation could be accomplished with provisions that directly conflict with those included in the shareholder proposal.

Since the batch of SEC no-action letters issued on February 12, 2016, contain no explanation of why Staff suddenly decided to reverse its long-standing interpretation, we can only speculate as to the reasons. However, many of those seeking the no-action letters granted beginning February 12, 2016, argued that since their company had adopted proxy access bylaws similar to those adopted by most other companies, that adoption, however weak, substantially addressed the issue. As a result, the shareholder's "essential purpose" had been achieved, and substantial implementation had occurred. Nonsense!

As the person who drafted the specific terms of the template used in each of the proposals where Staff granted no-action letters, I assure you the essential purpose was *not* to obtain watered-down versions of proxy access. An earlier proxy access proposal template was purposefully revised to ensure the form of proxy access obtained closely aligned with the essential elements defined by the SEC's vacated Rule 14a-11. Substantial Implementation would require each condition highlighted explicitly in the proposal to have been met by any board adopted bylaw seeking exemption under (i)(10).

Origins of the Industry Standard

As many company letters seeking no-action point out (I use Amazon.com as an example):

Proxy access is a complex issue. Because proxy access creates an entirely new right that implicates the interaction of state law nomination processes, Commission proxy rules, the intricacies of the beneficial ownership and proxy voting processes, and corporate governance considerations, bylaws implementing proxy access must address numerous substantive and procedural issues. This complexity was reflected in the text of the Commission's proxy access rule, Rule 14a-11 under the Exchange Act, which was 6,374 words long, counting "instructions" included in the rule but not counting the length of Schedule 14N or other rules that were adopted or amended at the same time that Rule 14a-11 was adopted.

Virtually all of the 487 words comprising the Proposal and its brief supporting statement consist of an extensive list of proxy access terms requested by the Proponent.⁸

The proposal's terms did *not* focus on 3% held for 3 years, as seems to have been the case by Staff granting no-action letters. It would be a lot easier and clearer if proponents could just reference the SEC's vacated Rule 14a-11 and request boards implement proxy access as close as practical to that vacated rule within the limitations of the existing regulatory framework. For example, in California, all regulations must meet the "clarity" standards of the Administrative Procedure Act. The Office of Administrative Law reviews them for compliance with those

⁸ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/jamesmcritchieamazon030316-14a8.pdf>

standards. Unfortunately, federal regulations, even regulations that have not been vacated, are too vague to be cited in proposals.

For example, on March 30, 2012, Staff issued a no-action letter on Dell, which included the following:

There appears to be some basis for your view that Dell may exclude the proposal under rule 14a-8(i)(3) as vague and indefinite. In arriving at this position, we note that the proposal provides that Dell's proxy materials shall include the director nominees of shareholders who satisfy the "SEC Rule 14a-8(b) eligibility requirements." The proposal, however, does not describe the specific eligibility requirements. In our view, the specific eligibility requirements represent a central aspect of the proposal. While we recognize that some shareholders voting on the proposal may be familiar with the eligibility requirements of Rule 14a-8(b), many other shareholders may not be familiar with the requirements and would not be able to determine the requirements based on the language of the proposal. As such, neither shareholders nor Dell would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, we will not recommend enforcement action to the Commission if Dell omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3). (Dell, March 30, 2012).⁹

If proponents cannot cite federal rules for something as simple as eligibility requirements, we certainly cannot cite a vacated Rule 14a-11 to describe the features that should be contained in proxy access bylaws. Instead, for the 2015 proxy season most proxy access advocates filed fairly generic proposals, describing little more in the way of specifics than that shareholders must hold 3% of the company's common stock for at least 3 years.

The primary objective of many shareholder advocates in 2015 was to begin a tidal wave of proxy access adoptions, even flawed adoptions, to get the process rolling. Quality was not as important as quantity. At large early adopting companies, such as Citigroup, I was willing to withdraw proposals even where boards limited shareholder groups to 20 and allowed access to 20% of the board or 2, whichever was greater. Other proponents agreed to even less favorable terms for potential proxy access proponents.

After we knew we had significant momentum, many of us tried to get back to the provisions of the vacated Rule 14a-11 when negotiating with companies. However, knowing the history of no-action decisions under Rule 14a-8(i)(10) and especially after Staff granted no-action relief to General Electric, it was obvious that proposals with little specificity were vulnerable to being watered down.

In the case of General Electric, the company implemented proxy access with the same ownership threshold, holding period, and cap on shareholder nominees as requested by the proposal but GE added a group limit of 20 shareholders.¹⁰ That was consistent with prior decisions under Rule 14a-8(i)(10) because the shareholder proposal was silent on the issue of group size limits.

⁹ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/jamesmccritchie033012-14a8.pdf>

¹⁰ <https://www.wsj.com/articles/ge-amends-bylaws-to-allow-proxy-access-for-big-investors-1423698010>

To remedy the situation, several of us began submitting proposals with greater specificity, including provisions to deny group caps, ensuring a minimum of two directors, and ensuring that restrictions that do not apply to other board nominees should not be imposed on shareholder nominees. This strengthened our hand in negotiations, and we could win better terms for agreements to withdraw.

Staff Drops a Bomb, Reinterpreting Rule 14a-8(i)(10)

The positive negotiating position that came with extra specificity of terms in proxy access proposals largely evaporated after February 12, 2016, when Staff issued no-action letters that appear to have found that the only essential provisions to proxy access bylaws are 3% of shares held for 3 years. Contrary to prior no-action opinions, Staff ignored the fact that shareholder proposals specified various other terms: 25% of the board, no group limitations, etc.

Democracy Takes One Step Forward, Two Steps Back

In 2015 the SEC took a small step in the right direction after my appeal of a no-action decision involving Whole Foods Market and howls of protest from more influential shareholders, led the SEC Chair White to call for a review of (i)(9) and an end to "gaming" the system. After seeking comment and suspending no-action opinions on that subdivision, Staff Legal Bulletin No. 14H (CF)¹¹ was issued to clarify the exclusion under subdivision (i)(9) applied only "if a reasonable shareholder could not logically vote in favor of both proposals."

Then in February 12, 2016, Staff decided unilaterally to 'protect' shareholders from the burden of having to compare bylaws adopted by boards of directors, in response to shareholder proposals, with the terms requested by the shareholder. Would that task be too confusing for shareholders? Staff declares 'substantial implementation' of proxy access even where dramatic differences occur between what is specifically requested and what has been granted. Isn't this the same 'gaming the system' that Chair White warned against the year before?

Before the suspension and clarification of (i)(9) in 2015, Staff had begun allowing issuers to omit shareholder proposals from the proxy and include their own, if their proposals were on the same subject. Even with those bad decisions, at least shareholders got to vote on the changes proposed by management.

Since SLB 14H and the February 12, 2016, no-action letters, SEC Staff essentially changed the game. Since that date, boards have been advised that when their company receives a proxy access proposal, they can simply adopt language independently. They do not need approval from shareholders. If the board adopts proxy access that allows shareholders with 3% of common stock held for three years to nominate a director, companies have met their "essential" purpose as defined by SEC Staff, without the benefit of a rulemaking. Therefore, the shareholder proposal can be omitted. Since boards do not even have to put bylaws up to a vote by shareholders, any remnant of direct democracy is eliminated. Gaming the system has become even easier than it was before SLB 14H.

If Chairman Gary Gensler were to suspend no-action opinions based on Rule 14a-8(i)(10) and call for a review of the history of that subdivision, Staff would find a very similar situation to what

¹¹ <https://www.sec.gov/corpfin/staff-legal-bulletin-14h-shareholder-proposals>

they found in investigating the evolution of how (i)(9) was interpreted. Starting narrowly, Staff gradually widened the exemption far beyond its original intent.

J. Robert Brown, a former member of the SEC's Investor Advisory Committee, has already done much of this review in his Comment Letter on Rule 14a-8(I)(10), Securities & Exchange Commission, June 18, 2015 (June 18, 2015).¹²

The Way Forward Without Gaming the System

There is an easy remedy to restore some semblance of accountability to shareholders. Go back to the Staff's interpretation of Rule 14a-8(i)(10) as it existed before February 12, 2016.

Fortunately, no-action letters "reflect only informal views" and do not set a precedent. Included with many no-action letters is the following statement: "SEC staff reserves the right to change the positions reflected in prior no-action letters."

Inclusion of Group Nomination Limits

Companies typically argue this provision, "which places a twenty-shareholder limit on the size of a nominating group, achieves the essential purpose of this aspect of the Proposal by ensuring shareholders are able to use the proxy access right effectively..." As evidence of its efficacy, companies note: "a twenty-shareholder nominating group is a widely embraced standard among companies that have adopted proxy access." That is evidence of the provision's popularity, not its efficacy.

The Council of Institutional Investors (CII), whose members hold more than \$3 trillion in assets researched the evidence and found the following (Proxy Access: Best Practices, August 2015):

We note that without the ability to aggregate holdings even CII's largest members would be unlikely to meet a 3% ownership requirement to nominate directors. Our review of current research found that even if the 20 largest public pension funds were able to aggregate their shares they would not meet the 3% criteria at most of the companies examined.¹³

CII's position is generally consistent with the view of the SEC's formal rulemaking. In 2010, the SEC considered but rejected imposing a cap on the permitted number of members in a nominating group. The SEC found that individual shareowners at most companies would not meet the minimum threshold of 3% ownership for proxy access unless they could aggregate their shares with other shareowners.

In contrast to typical adopted 'lite' bylaws, my proposal at Stryker seeks to allow "shareholders forming a nominating group not be limited with regard to the number in a participating group." There is an infinite difference between limiting shareholder groups to 20 instead of an unlimited number.

¹² Brown, J. Robert, Comment Letter on Rule 14a-8(I)(10), Securities & Exchange Commission, June 18, 2015 (June 18, 2015). U Denver Legal Studies Research Paper No. 15-26, Available at SSRN: <https://ssrn.com/abstract=2620417> or <http://dx.doi.org/10.2139/ssrn.2620417>

¹³ https://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf

Companies typically admit this provision is an essential element but argue a twenty-shareholder group is a widely embraced standard. However, they provide no evidence that this standard meets the provision's essential purpose, which is to allow shareholders to combine in groups to achieve the required holdings.

In permitting the exclusion of proposals, Rule 14a-8 imposes the burden of proof on companies. See Rule 14a-8(g). Companies have typically cited no evidence, only fashion. Why is fashion weighed more heavily by SEC Staff than evidence? Could it have something to do with where they hope to work after leaving the SEC?



Number of Nominees

My proposal seeks to allow shareholders to nominate one-quarter of the directors then serving, or two, whichever is greater. However, 'lite' bylaws provide that shareholder-nominated candidates cannot exceed 20% of the number of directors in office.

Although both one quarter and 20% often yield two nominees with the current board sizes, companies fail to meet an essential element of the proposal, which would ensure a more substantive proportion of shareholder nominees allowed on the proxy even if the number of directors changes.

Historical Conclusion

The series of no-action letters issued by Staff beginning February 12, 2016, are anomalous in their interpretation of what constitutes substantial implementation and what constitutes the essential elements of my proxy access template.

Here is an analogy from more than twenty years ago when I designed my house and hired a contractor to build it. I specified in the contract that the furnace must meet an annual fuel-utilization-efficiency (AFUE) rating of 95%, but the contractor installed one with an 80% AFUE

rating. When I pointed this out, the contractor knew he had to change out the furnace, even though he had to rip out a lot of steel framing to get to the furnace. He knew he had not met the essential terms of the contract.

Based on the anomalous no-action letters of February 12, 2016, if Staff was issuing an informal opinion on substantial implementation, they would apparently argue the quality of the furnace does not matter. Instead, they arbitrarily deem only a house's roof and walls essential elements.

Under Rule 14a-8(i)(10), boards are free to adopt elements that do not conflict with those requested in a shareholder proposal. If a proposal specifies a range, boards can select a percentage at the high end. Unless specified, boards can round down to the nearest whole number instead of rounding up to arrive the appropriate number of shareholder nominees for a specified percentage of the board. However, boards were not entitled under Rule 14a-8(i)(10) to round an infinite number of shareholders forming a group down to 20. That was not substantial implementation until February 12, 2016.

The anomalous no-action letters issued on February 12, 2016, or later provided no evidence why 3% of shares is considered an essential element to proxy access, but capping the number allowed to form a group is not. There is a world of difference between a group of twenty, which research by the Council of Institutional investors concludes cannot be reached by its members at most companies, and an unlimited group. One set of bylaws can actually be implemented; the other cannot.

Staff Flexibility

Although Rule 14a-8(j)(2) encourages companies to cite similar fact patterns as support for their position, no-action responses "only reflect informal views regarding the application of Rule 14a-8." The SEC Staff does not "claim to issue 'rulings' or 'decisions' on proposals that companies intend to exclude, and [its] determinations do not and cannot adjudicate the merits of a company's position with respect to a proposal."

Past decisions, while considered, are not precedent-setting. Staff can and has used a flexible approach, which is especially important for rapidly evolving issues. Staff Legal Bulletin 14L discussed how interpretations over the last four years increasingly deviated from the rules by basing decisions on whether a proposal is overly granular. Going forward, Staff will

focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer's impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

The Proposal's resolved clause indicates:

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

As cited in the proposal *Proxy Access in the United States: Revisiting the Proposed SEC Rule*, a cost-benefit analysis by CFA Institute, found proxy access would "benefit both the markets

and corporate boardrooms, with little cost or disruption," rising US market capitalization by up to \$140.3 billion.

That estimate was based on proxy access having *no limit* with regard to the number in a participating group. Since that time, the vast majority of companies that have adopted proxy access have limited groups to a maximum of 20 members. As a result, proxy access has only been used once. As a result, the anticipated economic benefits of proxy access have failed to materialize.

Mr. Gerber cites Oshkosh Corp. (November 4, 2016). Staff permitted exclusion as substantial implementation, even though Oshkosh implemented only three of six proposed changes because the company's changes "compare favorably with the guidelines of the proposal." In the case of Stryker, the resolved clause of our proposal explicitly states the following:

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

Our Company wants to deny a vote by shareholders on what is clearly identified as the *most essential* feature of the proxy access proposal. Not only is there no equivalency to *Oshkosh*, we now have a history of shareholders unable to use proxy access because commonly adopted group limits seek to preserve the position of entrenched incumbents. Staff can no longer logically find the company's changes "compare favorably with the guidelines of the proposal."

The implication of limiting the number of participants in a proxy access group is easily understood by shareholders and is an appropriate subject for shareholder input. Denying a vote on this and similar proposals has a collective cost of billions of dollars in shareholder value by foreclosing the ability of shareholders to harness free-market forces. The SEC should not sanction the attempt by our Company's entrenched board to evade market forces that could drive a significant increase in shareholder value. The Company should make its arguments to shareholders in its opposition statement, not in a no-action request the Staff.

Precedent For Proposals Amending Bylaws

Even if Staff ignores the above arguments, which they should not, they must consider precedent for proposals seeking to amend proxy access bylaws. In this case, Stryker's Board amended their company's bylaws on July 31, 2019. My proposal of November 14, 2021, requested changes to allow shareholders, without limits on group size, to be able to nominate up to 25% of the board. The most essential feature was that there be no limitation with regard to the number in a participating group.

The Company cites a plethora of no-action letters issued where a company had substantially implemented a proxy access proposal submitted before a company had adopted a proxy access bylaw, whereas the Proposal was submitted after the Company adopted a proxy access bylaw. This is not a distinction without any substantive difference, at least not in the mind of Staff.

If I ask a company to amend its bylaws to provide for proxy access, listing several suggested provisions and they implement most of them, I can understand how one might reasonably argue the request has been substantially implemented, even if such omissions were not contemplated by Commissioners when the adopted the Rule. However, if a company has already adopted

proxy access bylaws and I ask that two revisions be made, it is not substantial implementation of the second request if the company has implemented none of those suggested revisions.

As previously mentioned, Stryker cites the example of Oshkosh Corp. (Nov. 4, 2016). There Staff permitted exclusion under Rule 14a-8(i)(10) of a proposal because the board implemented three out of six “essential elements” specified in the proposal. Staff concluded that the company’s bylaw amendments implementing three of the proposed changes “compare favorably with the guidelines of the proposal.” That conclusion had no basis in the regulations, which does not provide authority to SEC Staff to decide which amendments are essential and which are not.

Stryker’s current bylaws have neither the recommended feature of nominating up to 25% of the Board or the identified essential feature of placing no limits on the number participating in a nominating group. Granting a no-action on a shareholder proposal seeking to amend existing proxy access provisions would be unprecedented. See H&R Block, Inc. (July 21, 2016),¹⁴ Microsoft Corporation (September 27, 2016)¹⁵ and Apple Inc. (October 27, 2016)¹⁶ The Walt Disney Company (November 3, 2016)¹⁷ and Whole Foods Market, Inc. (November 3, 2016)¹⁸ to cite just a few of the many such cases I have personally been involved in.

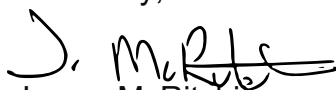
Although I hope Staff will change the position reflected in prior no-action letters of what constitutes the essential elements of proxy access, in the current case Staff need not repudiate any prior no-action letters to allow the Proposal to move forward, since it requests changes to existing bylaws.

Conclusion

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, the Company has failed to meet that burden. Accordingly, Staff must deny the no-action request.

We would be pleased to respond to Staff questions or negotiate with the Stryker Corporation on mutually agreeable terms for withdrawing the Proposal. You can reach James McRitchie by e-mailing PII.

Sincerely,


James McRitchie
Shareholder Advocate

¹⁴ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/mcritchieyoung072116-14a8.pdf>

¹⁵ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/jamesmcritchie092716-14a8.pdf>

¹⁶ <https://www.goodwinlaw.com/-/media/files/viewpoints/alerts/2016/jamesmcritchieapple10271614a8.pdf?la=en>

¹⁷ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/jamesmcritchiwalt110316-14a8.pdf>

¹⁸ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2016/jamesmcritchiwhole110316-14a8.pdf>