



DIVISION OF  
CORPORATION FINANCE

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

March 11, 2025

John J. Harrington  
Baker & Hostetler LLP

Re: Cincinnati Financial Corporation (the "Company")  
Incoming letter dated December 6, 2024

Dear John J. Harrington:

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

The Proposal requests that the Company's board take each step necessary so that each voting requirement in the Company's charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). Based on the information you have presented, it appears that the Company has already substantially implemented the Proposal. We note your representation that the Company will provide shareholders at its 2025 annual meeting with an opportunity to approve relevant amendments to its articles of incorporation. In analyzing this and similar requests, the staff generally will not consider voting standards implicit in state law unless the Proposal identifies the specific state law provisions at issue. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(10).

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

December 6, 2024

## VIA ELECTRONIC SUBMISSION

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

**Re: Cincinnati Financial Corporation  
Shareholder Proposal Submitted by John Chevedden  
Securities Exchange Act of 1934 - Rule 14a-8**

Ladies and Gentlemen:

This letter is to notify you that our client, Cincinnati Financial Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2025 Annual Meeting of Shareholders (collectively, the “2025 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from John Chevedden (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2025 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that a shareholder proponent is required to send the company a copy of any correspondence that the proponent elects to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

Please note that the Company intends to file a preliminary proxy statement on or about March 3, 2025. As such, we respectfully request the Staff provide a response to this letter in advance of such date as soon as reasonably practicable.

## **THE PROPOSAL**

The Proposal relates to a request to implement a majority voting standard. The text of the Proposal, in pertinent part, states:

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

A copy of the Proposal and the Supporting Statement, along with the cover letter, is attached to this letter as Exhibit A.

## **BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2025 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

## **ANALYSIS**

### *A. Rule 14a-8(i)(10) Background*

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976).

Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were “fully effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy by only a few words, and the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the “1983 Release”). In 1998, the Commission

amended Rule 14a-8(i)(10) to codify this revised interpretation. Exchange Act Release No. 40018 at n.30 (May 21, 1998). Thus, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded as moot. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010); *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Exxon Mobil Corp.* (avail. Jan. 24, 2001); *Masco Corp.* (avail. Mar. 29, 1999); *The Gap, Inc.* (avail. Mar. 8, 1996). The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991).

The Staff has historically concurred with the exclusion of shareholder proposals substantially similar or even identical to the Proposal that seek to eliminate the supermajority voting provisions from a company’s governing documents and replace them with majority voting standards. *See, e.g., PulteGroup, Inc.* (avail. March 19, 2024) (“*PulteGroup*”); *Eli Lilly and Company* (avail. March 14, 2024) (“*Eli Lilly*”); and *West Pharmaceutical Services, Inc.* (avail. March 13, 2024) (“*West Pharmaceuticals*”) (in each case, with respect to shareholder proposals submitted by the Proponent that were substantially the same as the Proposal, no-action relief was granted as substantially implemented under Rule 14a-8(i)(10) when the board of directors had approved amendments to organizational documents to remove supermajority voting provisions, directed that such amendments be submitted to a vote of shareholders and recommended in favor of such amendments). *See also AbbVie Inc.* (avail. Mar. 2, 2021); *Fortive Corp.* (avail. Feb. 12, 2020); *The Southern Company* (avail. Mar. 13, 2019); *KeyCorp* (avail. Mar. 22, 2019); *Abbvie Inc.* (avail. Feb. 27, 2019); *Korn/Ferry International* (avail. Jul. 6, 2017); *The Southern Company* (avail. Feb. 24, 2017); *The Brink’s Co.* (avail. Feb. 5, 2015); *Visa Inc.* (avail. Nov. 14, 2014); *Medtronic, Inc.* (avail. Jun. 13, 2013); and *McKesson Corp.* (avail. Apr. 8, 2011) (each permitting exclusion of a shareholder proposal seeking to remove the supermajority provisions from the company’s governing documents where the board had approved amendments to the company’s certificate of incorporation to replace the supermajority voting requirement with a majority of outstanding shares voting standard, and the company planned to provide shareholders at the next annual meeting an opportunity to approve amendments to the company’s certificate of incorporation to replace the supermajority voting provisions with a majority of outstanding shares voting standard).

Recently, in addressing proposals from the Proponent to *Eli Lilly* and *West Pharmaceuticals* that were substantially similar to the Proposal, the Staff expressly noted it “generally will not consider voting standards implicit in state law unless the Proposal identifies the specific state law provisions at issue.” This appears to be a change in approach from the Staff’s historical position. *See, e.g., The Goodyear Tire & Rubber Company* (avail. March 7, 2022) (with the Staff noting in its denial that “the Company appears to be subject to certain supermajority voting requirements under applicable state law and that the Company’s governing documents do not otherwise provide for a lower voting standard.”) The Proposal does not identify any specific state law provisions.

As described in more detail below, the Company has substantially implemented the Proposal in a manner analogous to the foregoing because the Company's Board of Directors (the "Board") has taken actions to remove all supermajority voting standards from its organizational documents.

We note that the Staff recently made some shifts in its approach to evaluating proposals such as the Proposal and the Commission has proposed amendments to Rule 14a-8(i)(10) in line with the Staff's approach. Specifically, the Staff denied no-action relief in *Fortive Corporation* (avail. Apr. 11, 2022) and *Rite Aid Corporation* (avail. May 3, 2022) for essentially the same proposal that in prior years the Staff deemed excludable when the companies stated their intention to replace supermajority voting provisions with a majority of the votes outstanding standard (rather than a majority of votes cast). As described in more detail below, the Company's actions differ from these circumstances because the only voting standards that will remain in the organizational documents will be the minimum allowable by applicable law (which, in the applicable circumstances, is a majority of outstanding shares as required by Ohio law) or a simple majority.

Finally, from a timing perspective, the Staff has consistently granted no-action relief in situations such as this where the Board lacks unilateral authority to adopt amendments to organizational documents but has taken all steps within its authority to approve the amendments and will submit them to a vote of shareholders at the upcoming 2025 Annual Meeting of Shareholders. *See, e.g., PulteGroup, Eli Lilly and West Pharmaceuticals.*

*B. Action by the Company to Substantially Implement the Proposal*

The Company's Amended and Restated Articles of Incorporation (the "Articles") contain two provisions calling for a supermajority vote of shareholders.

- Article Eighth requires the affirmative vote of the holders of seventy five (75) percent of all shares of the Company entitled to vote in the election of directors to approve certain "business combinations" (as defined therein) with entities that are, or were in certain cases, the beneficial owners of ten (10) percent of the outstanding shares of the Company entitled to vote in the election of directors, subject to certain exceptions.
- Article Tenth requires the affirmative vote of seventy five (75) percent of the outstanding stock of each class entitled to vote to alter, amend or repeal Article Sixth (which relates to director terms and removal provisions), Article Eighth (as describe above) and Article Tenth itself.

The only other provision of the Articles that contains a voting standard is Article Thirteenth, which provides that directors will be elected only if the votes "for" the candidate exceed the votes "against" the candidate (in other words, a simple majority), other than where there are more candidates than there are directors to be elected (*i.e.*, a contested election), in which case a plurality standard will apply. The Staff has consistently concurred that proposals very similar to the Proposal were substantially implemented under Rule 14a-8(i)(10) where the company retains a plurality standard in contested director elections. *See, e.g., PulteGroup; AT&T Inc.* (avail. March 15, 2023).

On November 15, 2024, the Board approved amendments to the Articles (the “Amendments”). The Board lacks unilateral authority to adopt the Amendments, so the Board directed that the Amendments be submitted to a vote of the Company’s shareholders at the 2025 Annual Meeting of Shareholders and resolved to recommend that shareholders approve the Amendments. The Company also intends to hire a proxy solicitor to solicit votes in support of the Amendments.

The Amendments would: (i) delete Article Eighth; and (ii) delete the supermajority voting standard in Article Tenth. We believe this alone substantially implements the Proposal as it relates to the Articles and is analogous to the recently granted no-action requests in PulteGroup, Eli Lilly and West Pharmaceuticals (noting, in particular, that the Proposal does not identify any specific state laws creating implicit voting standards).

However, the Amendments go further by also adding a new provision replacing Article Eighth that reduces any default provision in Chapter 1701 of the Ohio Revised Code (the “Ohio General Corporation Law”) that requires a vote of two-thirds or any other proportion of the Company’s voting power or of any particular class to a standard equal to the majority of the Company’s voting power of or of the applicable class.<sup>1</sup> Although not a simple majority, it is the minimum allowable threshold under the Ohio General Corporation Law for any shareholder vote required thereunder that is expressed as a designated proportion of the Company’s voting power.<sup>2</sup> In the words of the Proposal, it is the “closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.” The new Article Eighth only applies to votes required by the Ohio General Corporation Law that are expressed as a designated proportion of the Company’s voting power.<sup>3</sup> It does not apply to, and no other provision of the Articles addresses, voting requirements for shareholder votes occurring for other reasons, such as Commission rules and stock exchange requirements.<sup>4</sup>

If approved by shareholders, the Amendments would become effective upon filing with the Secretary of State of Ohio, which the Company would do promptly after shareholder approval of the Amendments is obtained. The text of the Amendments, in which deletions are

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<sup>1</sup> Certain provisions in the Ohio General Corporation provide for a default voting standard of two-thirds of the corporation’s voting power, including with respect to amendments to articles of incorporation (Section 1701.71), sale or disposition of substantially all assets (Section 1701.76) and merger and consolidation (Section 1701.78).

<sup>2</sup> The language in the Amendments tracks Section 1701.52 of the Ohio General Corporation Law, which states: “Notwithstanding any provision in sections 1701.01 to 1701.98, inclusive, of the Revised Code requiring for any purpose the vote, consent, waiver, or release of the holders of a designated proportion (but less than all) of the shares of any particular class or of each class, the articles may provide that for such purpose the vote, consent, waiver, or release of the holders of a greater or lesser proportion of the shares of such particular class or of each class shall be required, but unless otherwise expressly permitted by such sections such proportion shall be not less than a majority.” In other words, the minimum allowable threshold for such a required vote is the majority of the shares or shares of a particular class.

<sup>3</sup> As an example, under Section 1701.51 of the Ohio General Corporation Law, a majority of the shares present may adjourn a meeting. The new Article Eighth would not change that standard.

<sup>4</sup> Examples of such votes include non-binding say-on-pay votes and equity compensation plan votes. As disclosed in the Company’s most recent proxy statement, the disclosed standard for approval of such votes was the majority of shares present in person or by proxy. The Amendments do not impact this standard.

indicated by strikethroughs and additions are indicated by underlining, is attached hereto as Exhibit B.<sup>5</sup>

The Company's Amended and Restated Code of Regulations (the "Regulations") do not contain any supermajority voting provisions. The are only two voting standards contained in the Regulations.

- Article 1, Section 5 provides that the order of business fixed by the chairman of a shareholder meeting may be changed by the vote of the holders of shares entitling them to exercise a majority of the voting power of the shareholders present in person or by proxy and entitled to vote (in other words, by a vote of a simple majority of the shares present).
- Article VI, Section 1 provides that the Regulations may be altered, amended or repealed and new Regulations may be adopted by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the Corporation.

With respect to Article I, Section 5, although this is not the exact same standard as a majority of votes cast for and against because an abstention would have the effect of a vote against, we believe this *de minimis* difference, especially on an immaterial matter, does not preclude a determination of substantial implementation test under Staff precedent with respect to similar proposals. *See, e.g., AECOM* (avail. January 4, 2024).

With respect to Article VI, Section 1, this is the minimum standard permitted by the Ohio General Corporation Law for an amendment to the Regulations by shareholders.<sup>6</sup> In the words of the Proposal, it is the "closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws." Based on the foregoing, the Company does not intend to amend the Regulations

After the Amendments have been implemented, the Company's organizational documents will contain two provisions – the new Article Eighth in the Articles and the current Article IV, Section 1 of the Regulations – that require votes based on a majority of outstanding shares rather than a simple majority. In both cases, this is the minimum threshold permitted by the Ohio General Corporation Law on the applicable matters. We acknowledge that the Staff has recently denied no-action relief in situations involving substantially similar proposals where voting provisions requiring greater than a simple majority remained even though they were required by applicable law. *See Prologis, Inc.* (avail. March 13, 2024) (where all supermajority provisions were to be removed and replaced with a simple majority standard, except where applicable law

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<sup>5</sup> Unrelated to the Proposal, the Amendments also remove outdated provisions related to Board classification that were previously phased out.

<sup>6</sup> Section 1701.11(A)(1)(b) of the Ohio General Corporation Law provides that shareholders may adopt amendments to a corporation's regulations "by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal, or if the articles or regulations that have been adopted so provide, by the affirmative vote of the holders entitling them to exercise a greater proportion than a majority of the voting power of the corporation on the proposal."

required a majority of outstanding shares). *See also Molina Healthcare, Inc.* (avail. March 11, 2024) (where no amendments to organizational documents were made in response to the proposal). Although these examples are similar in many respects to other precedents where the Staff granted no-action relief as cited above, we emphasize that in this instance, the Company simply is not permitted under applicable law to replace the provisions at issue with any lower voting standard. The Proposal expressly contemplates this situation by referencing the closest standard permitted by applicable laws.

In summary, the Amendments will remove all supermajority voting provisions from the Articles and will replace them with a provision that lowers the default standard for certain votes required by law to the minimum allowable threshold for such votes. The Regulations do not contain any supermajority provisions and the only voting provision that is not a simple majority standard is already the minimum threshold allowed under applicable law for such a vote. As a result, we believe that the actions taken by the Board have implemented the “essential objectives” of the Proposal and thus it has been substantially, if not fully, implemented.

### CONCLUSION

Based upon the foregoing analysis, we believe that the Proposal has been substantially implemented and, therefore, will be excludable under Rule 14a-8(i)(10). Thus, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2025 Proxy Materials in reliance on Rule 14a-8(i)(10).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [jharrington@bakerlaw.com](mailto:jharrington@bakerlaw.com). If we can be of any further assistance in this matter, please do not hesitate to contact me at [jharrington@bakerlaw.com](mailto:jharrington@bakerlaw.com) or (216) 861-6697.

Very truly yours,



John J. Harrington

Enclosure

cc: Thomas C. Hogan, Executive Vice President, Chief Legal Officer and Corporate Secretary, The Cincinnati Insurance Company  
Amy Shepherd, Baker & Hostetler LLP  
Mr. John Chevedden

**EXHIBIT A**

**Proposal and Supporting Statement and Cover Letter**

PII

Mr. Thomas Christopher Hogan  
Corporate Secretary  
Cincinnati Financial Corporation (CINF)  
6200 South Gilmore Road  
Fairfield, OH 45014-5141  
PH: 513 870 2000



Dear Mr. Hogan,

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

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

This proposal is for the next annual shareholder meeting.

I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

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

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

**Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot.** If there is objection to the title please negotiate or seek no action relief as a last resort.

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

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals. Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I so request.

Sincerely,

  
John Chevedden

  
Date

[CINF: Rule 14a-8 Proposal, October 3, 2024]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Simple Majority Vote**

Shareholders request that our board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws. If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This includes making the necessary changes in plain English.

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

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy and Macy’s. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 98%-support at the 2023 annual meetings of American Airlines (AAL) and The Carlyle Group (CG).

The overwhelming shareholder support for this proposal topic at hundreds of major companies raises the question of why Cincinnati Financial has not initiated this proposal topic on its own. It also raises the question that Cincinnati Financial may be overlooking other areas of corporate governance improvement that could easily be adopted to increase shareholder value at virtually no cost.

Please vote yes:

**Simple Majority Vote – Proposal 4**

Notes:

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

The proposal number and title at the top of proposal is the number and title intended for publication in the proxy and on the ballot – word for word with no added words or mixture of shareholder words with management words.

It is critically important that the proponent have control of the ballot title with no words added or subtracted from the title because the title of the proposal may be the only words a voting shareholder sees. If management disagrees then it has the option of negotiating now or asking for no action relief.

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.

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

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

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT.

Please arrange in advance in a separate email message regarding a meeting if needed.

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

**PII**

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the top of the proposal and be center justified with the title.



## **EXHIBIT B**

### AMENDED AND RESTATED ARTICLES OF INCORPORATION OF

CINCINNATI FINANCIAL CORPORATION (as of ~~August 18, 2017~~) [\_\_\_\_\_]

FIRST: The name of the corporation is CINCINNATI FINANCIAL CORPORATION (the "Corporation").

SECOND: The principal office of the Corporation in the State of Ohio shall be located in the City of Fairfield, County of Butler.

THIRD: The purpose for which the Corporation is formed is to engage in any lawful act or activity for which corporations may be organized under the Ohio General Corporation Law specifically including acting as a control entity in an insurance holding company system under Chapter 3901 of the Ohio Revised Code. The Corporation is hereby expressly authorized to repurchase and to redeem its outstanding securities to the maximum extent now or hereafter permitted by applicable law.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is Five Hundred Million (500,000,000) and the par value of each share shall be Two (\$2.00) Dollars.

FIFTH: No holder of shares of any class of the Corporation shall have any preemptive right to acquire shares of the Corporation and the preemptive rights described in Ohio Revised Code §1701.15 are hereby specifically denied to the holders of shares of any class of the Corporation.

SIXTH: (a) ~~Directors shall be elected annually for terms of one year. Subject to the provisions of part (c) of this Article SIXTH, the Board of Directors shall be divided into three (3) classes, each class consisting of one third (as nearly as possible but in no event may any one class have greater than one more director than any other class) of the total number of directors. At each annual meeting of the shareholders, the successors to the class of directors whose term shall then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting.~~ Subject to the right of the shareholders to fix the number of directors at a meeting called for the purpose of electing directors, the Board of Directors may change the number of directors constituting the Board of Directors by resolution.

(b) Directors of the Corporation shall only be removed by the shareholders for cause. "Cause" for the removal of a director shall exist only upon the occurrence of one (1) of the following events: (1) the conviction of a director of a felony; or (2) a finding by a court of law that the director has been or is guilty of negligence or misconduct in the performance of his duties as a director of the Corporation. Vacancies in the Board of Directors, whether arising through death, resignation or removal of a director, or newly created directorships resulting from any increase in the authorized number of directors, shall be filled by a majority of the directors then in office, or by a sole remaining director, and the directors so chosen shall hold office until the next annual meeting of shareholders and until his or her successor has been duly elected and qualified. No decrease in the

number of authorized directors shall shorten the term of any incumbent director.

~~(c) — Notwithstanding anything contained in part (a) of this Article SIXTH to the contrary, beginning at the 2011 annual meeting of shareholders, directors shall be elected annually for terms of one year, except that any director whose term expires at the 2012 annual meeting of shareholders or the 2013 annual meeting of shareholders shall continue to hold office until the end of the term for which such director was elected or appointed and until such director's successor shall have been elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Accordingly, (i) at the 2010 annual meeting of shareholders, the directors whose terms expire at that meeting shall be elected to hold office for a three year term expiring at the 2013 annual meeting of shareholders; (ii) at that 2011 annual meeting of shareholders, the directors whose terms expire at that meeting shall be elected to hold office for a one year term expiring at the 2012 annual meeting of shareholders; and (iii) at the 2012 annual meeting of shareholders, the directors whose terms expire at that meeting shall be elected to hold office for a one year term expiring at the 2013 annual meeting of shareholders.~~

SEVENTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation;

To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created;

By a majority of the whole board, to designate one or more committees, each committee to consist of at least three of the directors of the corporation. The board 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. Any such committee, to the extent provided in the resolution or in the regulations of the corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

EIGHTH: ~~(a) Unless the conditions set forth in this Article are satisfied, the affirmative vote of the holders of seventy five (75) percent of all shares of the corporation entitled to vote in elections of Directors, shall be required for the adoption or authorization of a business combination (as hereinafter defined) with any other entity (as hereinafter defined) if, as of the record date for the determination of shareholders entitled to notice thereof and to vote thereon, the other entity is the beneficial owner, directly or indirectly, of more than ten (10) percent of the outstanding shares of the Corporation entitled to vote in elections of Directors. The seventy five (75) percent voting requirement set forth in the foregoing sentence shall not be applicable if:~~

~~The cash, or fair market value of other consideration, to be received per share by holders of common shares of the Corporation in the business combination is not less than the greater of: (A) the highest per share price (including brokerage commissions, soliciting dealers' fees, dealer-management compensation, and other expenses, including, but not limited to, costs of newspaper~~

advertisements, printing expenses, and attorney fees) paid by the other entity in acquiring any of its holdings of the common shares of the Corporation or, (B) an amount which bears the same or a greater percentage relationship to the market value price of the Corporation's common stock immediately prior to the announcement of such business combination as the highest per share price determined in (A) above bears to the market price of the Corporation's common stock immediately prior to the commencement of acquisition of the Corporation's common stock by the other entity but in no event in excess of two times the highest per share price determined in (A) above;

The provisions of this Article shall also apply to a business combination with any other entity that at any time has been the beneficial owner, directly or indirectly, of more than ten (10) percent of the outstanding shares of the Corporation entitled to vote in elections of Directors, notwithstanding the fact that the other entity has reduced its shareholdings below ten (10) percent if, as of the record date for the determination of shareholders entitled to notice of and to vote on the business combination, the other entity is an "affiliate" of the Corporation (as hereinafter defined).

(b) — As used in this Article, (1) the term "other entity" shall include any corporation, person, or other entity and any other entity with which it or its "affiliate" or "associate" (as defined below) has any agreement, arrangement, or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of shares of the Corporation, or that is its "affiliate" or "associate" as those terms are defined in Rule 12b-2 of the general rules and regulations under the Securities Exchange Act of 1934, together with the successors and assigns of those persons in any transaction or series of transactions not involving a public offering of the Corporation's shares within the meaning of the Securities Act of 1933; (2) an other entity shall be deemed to be the beneficial owner of any shares of the Corporation that the other entity has the right to acquire pursuant to any agreement or upon exercise of conversion rights, warrants, or options or otherwise; (3) the outstanding shares of any class of the Corporation shall include shares deemed owned through application of clause (2) above but shall not include any other shares that may be issuable pursuant to any agreement or upon exercise of conversion rights, warrants, or options or otherwise; (4) the term "business combination" shall include (A) the sale, exchange, lease, transfer or other disposition by the Corporation of all, or substantially all, of its assets or business to any other entity, (B) the consolidation of the Corporation with or its merger into any other entity, (C) the merger into the Corporation of any other entity, or (D) a "combination" or "majority share acquisition" in which the Corporation is the "acquiring corporation" (as those terms are defined in Section 1701.01 of the Ohio Revised Code or any similar provision hereafter enacted) and its voting shares are issued or transferred to any other entity or to the shareholders of any other entity, and the term "business combination" shall also include any agreement, contract, or other arrangement with another entity providing for any of the transactions described in (A) through (D) of this clause (4); and (5) for the purposes of clause (a)(1) of this Article, the term "other consideration to be received" shall mean common shares of the Corporation retained by its existing public shareholders in the event of a business combination with the other entity in which the Corporation is the surviving corporation.

(c) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. Notwithstanding any provision of Sections 1701.01 to 1701.98, inclusive, of the Ohio Revised Code, or any successor statutes now or hereafter in force, requiring for the authorization or taking of any action the vote or consent of the holders of shares entitling them to exercise two-thirds or any other proportion of the voting power of the Corporation or of any class or classes of shares thereof, such action, unless

otherwise expressly required by law or these Amended and Restated Articles of Incorporation, may be authorized or taken by the vote or consent of the holders of shares entitling them to exercise a majority of the voting power of the Corporation or of such class or classes of shares thereof.

NINTH: Meetings of stockholders may be held within or without the State of Ohio. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Ohio at such place or places as may be designated from time to time by the Board of Directors or in the Regulations of the Corporation. Elections of directors need not be by written ballot unless the Regulations of the Corporation shall so provide.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation. ~~Notwithstanding the foregoing, this Article and Articles SIXTH and EIGHTH of the Corporation's Articles of Incorporation may be altered, amended or repealed only if seventy five (75) percent of the outstanding stock of each class entitled to vote thereon as a class have been voted in favor of such action.~~

ELEVENTH: Each person who is or was a director or officer of the Corporation shall be indemnified by the Corporation to the full extent permitted by the General Corporation Law of the State of Ohio against any liability, cost or expense incurred by him in his capacity as a director or officer or arising out of his status as a director or officer. The Corporation may, but shall not be obligated to, maintain insurance, at its expense, to protect itself and any such person against any such liability, cost or expense. The indemnification authorized by this Article ELEVENTH shall not be exclusive of, and shall be in addition to, any other rights granted to a person seeking indemnification or advancement of expenses under any statute, the Regulations or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

TWELFTH: No action required to be taken or which may be taken at any annual or special meeting of shareholders of the Corporation may be taken without a meeting, and the power of shareholders to consent in writing, without a meeting, to the taking of any action, including (without limitation) the power of shareholders to adopt or amend the Regulations by written consent, is hereby specifically denied.

Special meetings of the shareholders of the Corporation may be called only by the Board of Directors or the Chief Executive Officer of the Corporation or by persons who hold fifty (50) percent of all shares of the Corporation outstanding and entitled to vote at such special meeting.

No holder of shares of any class of the Corporation shall have the right to cumulate his voting power in the election of the Board of Directors and the right to cumulative voting described in Ohio Revised Code §1701.55 is hereby specifically denied to the holders of shares of any class of the Corporation.

THIRTEENTH: At each meeting of shareholders at which directors are to be elected, a candidate for director shall be elected only if the votes "for" the candidate exceed the votes "against"

the candidate. Abstentions and broker nonvotes shall not be counted as votes “for” or “against” a candidate. Notwithstanding the foregoing, if the Board of Directors determines that the number of candidates exceeds the number of Directors to be elected, then in that election the candidates receiving the greatest number of votes shall be elected.