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

DIVISION OF
CORPORATION FINANCE

March 11, 2024

Jenna Cooper
Latham & Watkins LLP

Re: Molina Healthcare, Inc. (the "Company")
Incoming letter dated December 26, 2023

Dear Jenna Cooper:

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

The Proposal requests that the board take 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.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We do not believe that the Proposal, taken as a whole, is materially false or misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the Company has not substantially implemented 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/corpfin/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

LATHAM & WATKINS LLP

1271 Avenue of the Americas
New York, New York 10020-1401
Tel: +1.212.906.1200 Fax: +1.212.751.4864
www.lw.com

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

December 26, 2023

VIA ELECTRONIC MAIL

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
shareholderproposals@sec.gov

Re: **Molina Healthcare, Inc. Shareholder Proposal Submitted by John Chevedden**

To the addressee set forth above:

This letter is submitted pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, on behalf of Molina Healthcare, Inc., a Delaware corporation (the "***Company***"). The Company has received a shareholder proposal (the "***Proposal***") from John Chevedden (the "***Proponent***") for inclusion in the Company's proxy statement (the "***Proxy Materials***") for the Company's 2024 Annual Meeting of Stockholders. A copy of the Proposal, together with other relevant correspondence relating to the Proposal, is attached hereto as Exhibit A.

On behalf of the Company, we hereby advise the staff of the Division of Corporation Finance (the "***Staff***") that the Company intends to exclude the Proposal from its Proxy Materials. The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the "***Commission***") if the Company excludes the Proposal pursuant to Rule 14a-8(i)(10), on the basis that the Proposal has been substantially implemented, or pursuant to Rule 14a-8(i)(3), on the basis that the Proposal is materially false and misleading in violation of Rule 14a-9.

By copy of this letter, we are advising the Proponent of the Company's intention to exclude the Proposal as described above. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, on behalf of the Company, we are submitting by electronic mail (i) this letter, which sets forth its reasons for excluding the Proposal, and (ii) correspondence with the Proponent related to the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter on the Company's behalf not less than 80 days before the Company intends to file its Proxy Materials and are sending a copy of this letter concurrently to the Proponent. The factual statements in this letter have been provided to us by the Company and Latham & Watkins LLP has not conducted any independent verification of such statements.

I. The Proposal.

On October 13, 2023, the Company received a letter from the Proponent, submitting the Proposal for inclusion in the 2024 Proxy Materials. The Proposal, in material 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.
>
> Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.
>
> This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy, McGraw-Hill and Macy's. These votes would have been higher than 74% to 88% if more shareholders had access to independent proxy voting advice. This proposal topic also received overwhelming 98%-support each at the 2023 annual meetings of American Airlines (AAL) and The Carlyle Group (CG).
>
> This is a corporate governance improvement proposal that the Molina Healthcare Board of Directors should have put to a shareholder vote on its own initiative years ago.

II. The Proposal May Be Excluded under Rule 14a-8(i)(10) Because the Company Has Already Substantially Implemented the Proposal.

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

Rule 14a-8(i)(10) provides that a company may exclude a shareholder proposal from its proxy materials if the company has substantially implemented the proposal. In explaining the scope of a predecessor to Rule 14a-8(i)(10), the Commission stated that the exclusion is "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) (discussing the rationale for adopting the predecessor to Rule 14a-8(i)(10), which provided as a substantive basis for omitting a shareholder proposal that "the proposal has been rendered moot by the actions of the management").

At one time, the Staff interpreted the predecessor rule narrowly, considering a proposal to be excludable under this provision only if it had been "'fully' effected" by the company. *See* Exchange Act Release No. 19135 at § II.B.5. (Oct. 14, 1982). By 1982, however, the Commission recognized that the Staff's narrow interpretation of the predecessor rule "may not serve the interests of the issuer's security holders at large and may lead to an abuse of the security holder proposal process," in particular by enabling proponents to argue "successfully on numerous occasions that a proposal may not be excluded as moot in cases where the company has taken most but not all of the actions requested by the proposal." *Id.* Accordingly, the Commission proposed in 1982, and adopted in 1983, a revised interpretation of the rule

to permit the omission of proposals that had been "substantially implemented." *See* Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the "***1983 Release***") (indicating that the Staff's "previous formalistic application of" the predecessor rule "defeated its purpose" because the interpretation allowed proponents to obtain a shareholder vote on an existing company policy by changing only a few words of the policy). The Commission later codified this revised interpretation in Exchange Act Release No. 40018 at n.30 (May 21, 1998). Accordingly, the actions requested by a proposal need not be "fully effected" by the company to be excluded; rather, to be excluded, they need only to have been "substantially implemented" by the company. *See* the 1983 Release; *see, e.g.*, *Best Buy Co., Inc.* (avail. Apr. 22, 2022); *Starbucks Corp.* (avail. Jan. 19, 2022); *General Mills, Inc.* (avail. Aug. 6, 2021); *salesforce.com, inc.* (avail. Apr. 20, 2021); *Alphabet Inc.* (avail. Apr. 16, 2021); *Comcast Corp.* (avail. Apr. 9, 2021).

Applying this standard, 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). 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 consistently concurred that the proposal has been "substantially implemented" and may be excluded. *See, e.g.*, *IDACORP, Inc.* (avail. Apr. 1, 2022); *Starbucks Corp.* (avail. Jan. 19, 2022); *Devon Energy Corp.* (avail. Apr. 1, 2020); *The Brink's Co.* (avail. Feb. 5, 2015); *Visa, Inc.* (avail. Nov. 14, 2014); *Exxon Mobil Corp.* (avail. Mar. 23, 2009). Under this framework, a proposal may be excluded under Rule 14a-8(i)(10) even if the company (i) did not take the exact action requested by the proponent, (ii) did not implement the proposal in every detail, or (iii) exercised discretion in determining how to implement the proposal. *See, e.g.*, *PPG Industries Inc.* (avail. Jan. 16, 2020); *Bank of New York Mellon Corp*. (avail. Feb. 15, 2019); *Exelon Corp.* (avail. Feb. 26, 2010*)*; *Exxon Mobil Corp. (Burt)* (avail. Mar. 23, 2009); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. Jul. 3, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Exxon Mobil Corp.* (avail. Jan. 24, 2001).

In 2022, the Commission proposed amendments to Rule 14a-8 that included, among other things, an amendment to Rule 14a-8(i)(10) to provide that proposals would be excludable if a company has already implemented the "essential elements" of the proposal. *See* Exchange Act Release No. 95267 (July 13, 2022). While the proposed amendment has not been adopted by the Commission, and therefore it is not applicable to the Staff's review of this request, it is notable that the Commission confirmed that, even under the proposed standard, the analysis should be informed by the proponent's "primary objectives" and the proposal "need not be rendered entirely moot, or be fully implemented in exactly the way a proponent desires, in order to be excluded." *Id*., at § II.A.2.

B. The Company's Charter and Bylaws Contain No Supermajority Voting Provisions.

The Proposal purports to address the potential harmful effects of "supermajority voting requirements" by requesting 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." However, neither the Company's Certificate of Incorporation (the "***Charter***")[1] nor the Company's Sixth Amended and Restated Bylaws (the "***Sixth Amended and Restated Bylaws***")[2] (the version of the bylaws that was in effect when the Proposal was submitted) contains any voting requirement that calls for a greater

[1] A copy of the Charter is attached hereto as Exhibit B.

[2] A copy of the Sixth Amended and Restated Bylaws is attached hereto as Exhibit C.

than simple majority vote (also referred to herein as a "***supermajority voting requirement***"). On December 22, 2023, unrelated to the submission of the Proposal, the Board approved an amendment and restatement of the Company's Sixth Amended and Restated Bylaws (the "***Bylaws***").[3] Consistent with the Sixth Amended and Restated Bylaws, the Bylaws do not contain any voting requirements greater than simple majority vote.[4]

The voting standards included in the Company's Charter and Bylaws are stated below:

Matter	Voting Standard	Charter or Bylaw Provision
Election of directors	Majority of the votes cast in uncontested election; plurality of the votes cast in contested election	Bylaws, Section 3.2(a)
Amendment of Charter by stockholders	Affirmative vote of at least 50% of the voting power of all of the then outstanding shares of the capital stock, voting together as a single class	Charter, Article XI
Director Removal	Affirmative vote of the holders of a majority of the voting power of the then issued and outstanding shares of the Corporation's stock entitled to vote at an election of directors	Charter, Article V, Paragraph B (*see* Exhibit E)
Amendment of Bylaws by stockholders	Affirmative vote of the holders of a majority of the stock issued and outstanding and having voting power	Bylaws, Section 9.9

[3] A copy of the Bylaws is attached hereto as Exhibit D.

[4] Prior to February 2019, the Company's bylaws then in effect (the "***Fifth Amended and Restated Bylaws***") contained one supermajority voting requirement – a 66 2/3% vote for the removal of directors (the "***Director Removal Supermajority Requirement***"). At that time, the Charter was silent on the voting standard for director removal. In February 2019, the Board amended and restated the Fifth Amended and Restated Bylaws to, among other things, remove the Director Removal Supermajority Requirement (see page 122 of the Company's Annual Report on Form 10-K for the year ended December 31, 2018, filed with the SEC on February 19, 2019, and Exhibits C and D). In May 2019, following approval by the Company's stockholders at the Company's annual meeting of stockholders, Article V, Paragraph B of the Charter was amended to provide, among other things, that "[a]ny director or the whole Board of Directors may be removed from office at any time with the affirmative vote of the holders of a majority of the voting power of the then issued and outstanding shares of the Corporation's stock entitled to vote at an election of directors," which is the minimum standard required by Section 141(k) of the General Corporation Law of the State of Delaware ("***DGCL***"). The certificate of amendment is attached hereto as Exhibit E.

All other matters, unless a different vote is required by law, stock exchange rule, Charter or Bylaws	Vote of the holders of a majority in voting power of the shares present in person or represented by proxy and entitled to vote on such matter	Bylaws, Section 2.9

As noted in the table above, the Company does not have any voting standard in its Charter or Bylaws that would require anything greater than a simple majority vote.

The Staff has found consistently that proposals calling for the elimination of provisions requiring a "greater than simple majority vote" are excludable under Rule 14a-8(i)(10) in situations where a company's governing documents do not contain any supermajority voting requirements. For example, in *AECOM, Inc.* (avail. Nov. 1, 2016), the Staff granted no-action relief and allowed the company to exclude a proposal nearly identical to the Proposal on substantial implementation grounds. The proposal in AECOM requested that "the Board of Directors take each step necessary so that each voting requirement … 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". At that time, AECOM had a plurality voting standard in place for the election of directors and, like the Company, a majority of shares present in person or represented by proxy standard for other matters (prior to submission of the no-action request, AECOM's Board had approved the amendment of the company's certificate of incorporation to remove its one remaining supermajority voting requirement, subject to stockholder approval). *See also AT&T Inc.* (avail. Mar. 15, 2023) (concurring that AT&T had substantially implemented a supermajority voting proposal after AT&T demonstrated that there were no supermajority voting provisions in the company's certificate of incorporation or bylaws); *KeyCorp*. (avail. Mar. 22, 2019) (concurring with exclusion where the company did not propose making any further changes because its governing documents did not contain any supermajority voting provisions with respect to its common stock); *Ferro Corp*. (avail Feb. 6, 2019) (concurring with exclusion where all supermajority voting provisions had already been eliminated from the company's governing documents, so no further company action was required); and *Brocade Communications Systems, Inc.* (avail. Dec. 19, 2016) (determining that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," and therefore the proposal was excludable under Rule 14a-8(i)(10), because the company did not have any voting standards in place that were more stringent than approval of a majority of the company's outstanding shares). While the Staff has recently taken the position that replacing supermajority voting provisions with a majority of outstanding shares standard does not qualify as substantial implementation, these precedents are inapposite here, as they involved companies that had supermajority voting provisions in place at the time the proposals were submitted. *See, e.g.*, *Rite Aid Corp.* (avail. May 3, 2022); *Fortive Corp.* (avail. Apr. 11, 2022). Here, the Company has no supermajority voting requirements in its Charter or Bylaws and, as a result, there would be nothing further for the Company to do if the Proposal were to be approved by stockholders.

As the Proposal's "essential objective" has already been satisfied, the Proposal may be excluded under Rule 14a-8(i)(10) due to substantial implementation.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Materially False and Misleading.

A. Background of Rule 14a-8(i)(3).

Rule 14a-8(i)(3) provides that a company may exclude a proposal from its proxy statement if the proposal or supporting statement is "contrary to any of the Commission's proxy rules, including [Rule] 14a-9." Rule 14a-9 provides that no solicitation may be made by means of any proxy statement containing "any statement, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading."

In *Staff Legal Bulletin No. 14B* (Sept. 15, 2004), the Staff stated that "reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where . . . the company demonstrates objectively that a factual statement is materially false or misleading." Further, *Staff Legal Bulletin No. 14* (July 13, 2001) provides that "when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading."

Staff precedent consistently supports the position that, when the premise of a proposal is based on an objectively false or materially misleading statement, total exclusion of the proposal is warranted. *See NETGEAR, Inc.* (avail. Apr. 12, 2021) (finding that the proposal was excludable because the assertion in the proposal's supporting statement that special meetings could only be called by the board, chairman, chief executive officer or president, when the company's bylaws permitted shareholders owning at least 25% of the voting power to call a special meeting, was materially false and misleading); *Ferro Corp.* (avail. Mar. 17, 2015) (concurring in the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which incorrectly suggested that the shareholders would have increased rights if Delaware law governed the company); *JPMorgan Chase & Co.* (avail. Mar. 11, 2014, recon. denied Mar. 28, 2014) (concurring in the exclusion of a proposal in reliance on Rule 14a-8(i)(3) because, among other things, it misrepresented the company's vote counting standard for electing directors and mischaracterized the company's treatment of abstentions).

B. The Proposal Is Materially False and Misleading in Violation of Rule 14a-9.

The Proposal is materially false and misleading because it implies numerous times that the Company has in place supermajority voting requirements with respect to stockholder action, which is not the case. The Proposal asks the Board to "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 …". The Proposal focuses on the potential harm to shareholders from supermajority voting requirements, which are described in the Proposal as "one of 6 entrenching mechanisms that are negatively related to company performance" and a means "to block initiatives supported by most shareowners but opposed by a status quo management." The Proposal then notes the high levels of stockholder support that the proposal topic received at several other companies, presumably as evidence that adoption of the Proposal similarly is in the best interests of the Company's stockholders.

The Proposal fails to note, however, that there are no provisions in either the Charter or the Bylaws that would require a supermajority vote, as discussed in Section I.B. Further, the Proposal does not clarify that the other companies referenced in the Proposal as analogous examples each had supermajority provisions in their governing documents at that time.

The statements described above are misleading because they materially misconstrue the Company's existing governance practices. *See Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014) ("when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company's existing corporate governance practices are important to the stockholder's decision whether to vote in favor of the proposed measure" and therefore are material). Specifically, they convey the false notion that the Company has supermajority voting requirements in place—and therefore that the Company's stockholders are vulnerable to the harms described in the Proposal—and falsely suggest that a vote in favor of the Proposal could lead to the amendment of non-existent provisions. The statements are material because stockholders likely would assume them to be true and would consider them in the context of determining how to vote on the Proposal. As a result, a stockholder's vote could be based on the mistaken assumption that approval of the Proposal is necessary to remove detrimental supermajority voting provisions.

Rule 14a-8(i)(3) is intended to protect a company from having to include in its proxy materials a proposal that contains materially false and misleading allegations, in violation of Rule 14a-9, as a means to trick stockholders into supporting a proposal. Inclusion of the Proposal in the Company's proxy materials could have exactly that result, and therefore the Proposal should be excluded under Rule 14a-8(i)(3).

* * * *

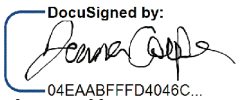
IV. Conclusion.

For all of the reasons stated above, it is the Company's position that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10) or, in the alternative, pursuant to Rule 14a-8(i)(3). We request that the Staff concur in our view or, alternatively, confirm that the Staff will not recommend any enforcement action to the Commission if the Company so excludes the Proposal.

If the Staff is unable to concur with the Company's position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff's final position. In addition, the Company requests that the Proponent copy the undersigned on any response he may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned at (212) 906-1324 or by email at jenna.cooper@lw.com to discuss any questions you may have regarding this matter.

Sincerely,

DocuSigned by:

04EAABFFFD4046C...

Jenna Cooper
of LATHAM & WATKINS LLP

Enclosures

cc: John Chevedden
Jeff Barlow, Molina Healthcare, Inc.

Exhibit A

Copy of the Proposal and Relevant Correspondence

Copy of the Proposal

JOHN CHEVEDDEN

[redacted] [redacted]

Mr. Jeffrey Don Barlow
Molina Healthcare, Inc. (MOH)
200 Oceangate
Suite 100
Long Beach, CA 90802
PH: 562 435 3666

Dear Mr. Barlow,

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 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 [redacted] it may very well save you from formally requesting a broker letter from me.

Please confirm that this poposal 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

October 2, 2023

Date

cc: Joseph Krocheski <Joseph.Krocheski@molinahealthcare.com>

[MOH: Rule 14a-8 Proposal, October 13, 2023]
[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. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

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

This is a corporate governance improvement proposal that the Molina Healthcare Board of Directors should have put to a shareholder vote on its own initiative years ago.

This proposal is focused on the simple majority vote topic, but it is worth noting that there are other areas of improvement needed in the corporate governance of Molina Healthcare. For instance executive pay was rejected by 15% of votes in 2023 and Ms. Ronna Romney, age 80, Vice-Chair of the Board and Chair of the nomination committee, was rejected by 13% of votes. A 5% rejection each regarding the say on executive pay topic and director elections is often the norm at well performing companies.

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

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

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

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [olmsted7p (at) earthlink.net].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

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

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

Copy of Relevant Correspondence

From: John Chevedden [redacted]
Sent: Friday, October 13, 2023 12:59:36 PM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>; Krocheski, Joseph <Joseph.Krocheski@molinahealthcare.com>
Subject: Rule 14a-8 Proposal (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Rule 14a-8 Proposal (MOH)

Dear Mr. Barlow,
Please see the attached rule 14a-8 proposal.
Please confirm that this is 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.

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.
John Chevedden

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

From: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Sent: Wednesday, November 22, 2023 10:42 AM
To: John Chevedden [redacted]
Cc: Krocheski, Joseph <Joseph.Krocheski@molinahealthcare.com>; Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: RE: Rule 14a-8 broker Letter (MOH)

Dear Mr. Chevedden:

Thank you for providing the additional proof of ownership information in connection with your Rule 14a-8 proposal entitled "Simple Majority Vote" submitted on October 13, 2023.

Your proposal focuses largely on the potential negative impact of supermajority voting standards on company performance, on the basis that these serve as an entrenching mechanism and can be used by companies to block initiatives supported by shareholders but opposed by management.

However, the Company has no supermajority voting standards in place in its governing documents. Instead, the Company's governing documents provide that all matters submitted to a shareholder vote are subject to a majority voting standard, including the election of directors.

Given that the Company does not have supermajority voting requirements in its governing documents, we respectfully request that you withdraw your proposal.

Best regards,

Jeff Barlow

From: John Chevedden [redacted]
Sent: Thursday, November 2, 2023 12:06 PM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>; Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>; Krocheski, Joseph <Joseph.Krocheski@molinahealthcare.com>
Subject: Rule 14a-8 broker Letter (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Rule 14a-8 broker Letter (MOH)

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

From: John Chevedden [redacted]
Sent: Wednesday, November 22, 2023 12:26 PM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Subject: Rule 14a-8 broker Letter (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Any director may be removed at any time only for cause by an affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the shares then entitled to vote in the election of directors.

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

From: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Sent: Monday, December 18, 2023 4:30 PM
To: John Chevedden [redacted]
Cc: Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: RE: Rule 14a-8 broker Letter (MOH)

Dear Mr. Chevedden:

We are following up on our below email regarding the requested withdrawal of your proposal. As we noted previously, Molina no longer has any supermajority provisions in its certificate of incorporation or bylaws.

For additional context, the supermajority voting provision for director removal that you had flagged was included in the Company's Fifth Amended and Restated Bylaws as Section 3.3(c) (linked here). In February 2019, the Board approved and adopted the Sixth Amended and Restated Bylaws, linked here, which, among other things, removed Section 3.3(c) in its entirety. Concurrently, the Board approved amendments to the Company's certificate of incorporation, to be submitted to the Company's stockholders for approval at the 2019 annual meeting; these amendments included, among other things, a new provision specifying that directors may be removed by a majority vote (linked here; see Exhibit A). The amendments were approved by the Company's stockholders on May 8, 2019.

These amendments were discussed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2018, under the caption "Other Information— Amendments to Certificate of Incorporation and Bylaws" (linked here).

If you would, please confirm receipt of this email and if you agree to withdraw your proposal.

Best,

Jeff Barlow

From: Barlow, Jeff
Sent: Monday, November 27, 2023 10:43 AM
To: John Chevedden [redacted]
Cc: Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: RE: Rule 14a-8 broker Letter (MOH)

Dear Mr. Chevedden:

We note that the language you quote below was removed from our Bylaws in 2019. The Company's Certificate of Incorporation was amended that year to provide that directors may be removed by a majority stockholder vote. The certificate of amendment to the Certificate of Incorporation was most recently included as Exhibit 3.3 to our Annual Report on Form 10-K filed on February 13, 2023 and is linked here. Given that context, and the lack of any supermajority voting requirements for stockholders in our governing documents, we again respectfully request that you withdraw your proposal.

Best regards,
Jeff Barlow

From: John Chevedden [redacted]

Sent: Wednesday, November 22, 2023 12:26 PM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Subject: Rule 14a-8 broker Letter (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Any director may be removed at any time only for cause by an affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the shares then entitled to vote in the election of directors.

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

From: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Sent: Thursday, December 21, 2023 6:10 PM
To: John Chevedden [redacted]; Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: RE: (MOH)

Dear Mr. Chevedden –

Our applicable voting standards are contained in our Certificate of Incorporation, as amended, and Sixth Amended and Restated Bylaws, which are included as Exhibits 3.1 through 3.4 to our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

Regards,
Jeff Barlow

From: John Chevedden [redacted]
Sent: Tuesday, December 19, 2023 8:22 AM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>; Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Mr. Barlow,
Does Molina Healthcare have the form of simple majority vote that is the closest to a majority of votes cast for and against as permitted by state law.
John Chevedden

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

From: John Chevedden [redacted]
Sent: Thursday, December 21, 2023 7:17 PM
To: Barlow, Jeff <Jeff.Barlow@MolinaHealthCare.Com>
Cc: Boggs, Codruta <Codruta.Boggs@MolinaHealthCare.Com>
Subject: (MOH)

EXTERNAL EMAIL: Please do not click any links or open any attachments unless you trust the sender and know the content is safe.

Mr. Barlow,
Thank you for giving directions to 50% of the answer.
John Chevedden

IMPORTANT NOTICE TO RECIPIENT: This email is meant only for the intended recipient of the transmission. In addition, this email may be a communication that is privileged by law. If you received this email in error, any review, use, disclosure, distribution, or copying of this email is strictly prohibited. Please notify us immediately of the error by return email, and please delete this email from your system. Thank you for your cooperation.

Exhibit B

Certificate of Incorporation

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "MOLINA HEALTHCARE, INC.", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF JULY, A.D. 2002, AT 1 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3551135 8100
SR# 20234315728

Authentication: 204893183
Date: 12-22-23

You may verify this certificate online at corp.delaware.gov/authver.shtml

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 01:00 PM 07/24/2002
020472306 - 3551135

CERTIFICATE OF INCORPORATION

OF

MOLINA HEALTHCARE, INC.

ARTICLE I

The name of this Corporation shall be: Molina Healthcare, Inc.

ARTICLE II

The name of the registered office of the Corporation in the State of Delaware is The Corporation Trust Company, and the address of the registered agent at that address is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "Delaware Corporation Law").

ARTICLE IV

A. The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 100,000,000 shares, consisting of (a) 80,000,000 shares of Common Stock, par value $0.001 per share ("Common Stock"), and (b) 20,000,000 shares of Preferred Stock, par value $0.001 per share ("Preferred Stock").

B. Preferred Stock.

1. The Board of Directors of the Corporation (the "Board of Directors") is authorized to provide, by resolution, for one or more series of Preferred Stock to be comprised of authorized but unissued shares of Preferred Stock. Except as may be required by law, the shares in any series of Preferred Stock need not be identical to any other series of Preferred Stock. Before any shares of any such series of Preferred Stock are issued, the Board of Directors shall fix, and is hereby expressly empowered to fix, by resolution, rights, preferences and privileges of, and qualifications, restrictions and limitations applicable to, such series, including the following:

(a) The designation of such series, the number of shares to constitute such series and the stated value thereof (if different from the par value thereof);

(b) Whether the shares of such series shall have voting rights (and, if so, the terms of such voting rights, which may be full, special or limited) and whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of one or more other series or class of capital stock;

(c) The preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions, if any, with respect to such series;

(d) The dividends, if any, payable on such series, whether any such dividends shall be cumulative (and, if so, from what dates), whether any such dividends are payable in cash, stock of the Corporation or other property or a combination thereof, the conditions and dates upon which such dividends shall be payable and the preference or relation which such dividends shall bear to the dividends payable on any shares of capital stock of any other class or any other series of Preferred Stock;

(e) Whether the shares of such series shall be subject to redemption by the Corporation or upon the happening of any specified event, and, if so, the times, prices (which may be payable in the form of cash, notes, securities or other property or rights) and other conditions relating to such redemption;

(f) The amounts payable in respect of shares of such series, and the other rights and preferences of the holders of such shares, in the event of the voluntary or involuntary liquidation, dissolution or winding up, or upon any distribution of the assets, of the Corporation;

(g) Whether the shares of such series shall be subject to a retirement or sinking fund (and, if so, the extent to and manner in which any such retirement or sinking fund shall be applied to the purchase or redemption of the shares of such series for retirement or other corporate purposes and the other terms and provisions relating thereto);

(h) Whether the shares of such series shall be convertible into, or exchangeable for, shares of Common Stock or any other series of Preferred Stock, any other securities (whether or not issued by the Corporation) or any other property of the Corporation (and, if so, the price or prices or the rate or rates of such conversion or exchange, and any other terms and conditions of such conversion or exchange);

(i) The limitations and restrictions, if any, to be effective upon the payment of dividends or the making of other distributions on, or upon the purchase, redemption or other acquisition by the Company of, Common Stock or other shares of capital stock of any other class or any other series of Preferred Stock; and

(j) The conditions (if any) applicable to, or restrictions (if any) on, the creation of indebtedness of the Corporation or upon the issuance of any additional capital stock, including additional shares of such series or any other series of Preferred Stock or any other class of capital stock.

2. The Board of Directors is authorized to increase the number of shares of the Preferred Stock designated for any existing series of Preferred Stock by a resolution adding to such series authorized and unissued shares of the Preferred Stock not designated for any other series of Preferred Stock. The Board of Directors is authorized to decrease the number of shares of the Preferred Stock designated for any existing series of Preferred Stock by a resolution, subtracting from such series unissued shares of the Preferred Stock designated for such series.

C. Common Stock.

1. Except as otherwise required by law, and subject to any special voting rights which may be granted to any series of Preferred Stock in the Board of Directors resolutions which create such series, each holder of Common Stock shall be entitled to one vote for each share of Common Stock standing in such holder's name on the records of the Corporation on each matter submitted to a vote of the stockholders. Holders of Common Stock shall not have the right to cumulative voting in the election of directors of the Corporation.

2. Subject to the rights of the holders of the Preferred Stock, the holders of the Common Stock shall be entitled to receive such dividends and other distributions, in cash, securities or property of the Corporation, as may be declared thereon from time to time by the Board of Directors, out of the assets and funds of the Corporation legally available therefor.

3. Upon any liquidation, dissolution or winding up of the Corporation, the holders of the Common Stock shall be entitled to receive, ratably in accordance with the shares of Common Stock held by them, any amounts remaining after payment of the holders of the Preferred Stock.

D. General.

1. Subject to the foregoing provisions of this Certificate of Incorporation, the Corporation may issue shares of its Preferred Stock and Common Stock from time to time for such consideration (in any form, but not less in value than the par value thereof) as may be fixed by the Board of Directors, which is expressly authorized to fix such consideration in its absolute and uncontrolled discretion subject to the foregoing conditions. Shares of Preferred Stock or Common Stock so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be subject to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

2. The Corporation shall have authority to create and grant rights and options entitling their holders to purchase or otherwise acquire shares of any class or series of the Corporation's capital stock or other securities of the Corporation, and such rights and options shall be evidenced by instruments approved by the Board of Directors. The Board of Directors shall be empowered to set the exercise price, duration, times for exercise and other terms of such options or rights; provided, however, that the consideration to be

received (which may be in any form permitted by the Board of Directors) for any shares of capital stock subject thereto shall have a value not less than the par value thereof.

ARTICLE V

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in the Board of Directors of the Corporation. The number of directors which shall constitute the entire Board of Directors shall be fixed by, or in the manner provided in, the Bylaws of the Corporation, subject to any restrictions that may be set forth in this Certificate.

B. The directors of the Corporation shall be classified, with respect to the time for which they hold office, into three classes as nearly equal in number as possible: one class the term of which expires at the first annual meeting of stockholders that is held after the first organizational meeting of the Board of Directors, a second class the term of which expires at the second annual meeting of stockholders that is held after the first organizational meeting of the Board of Directors and a third class the term of which expires at the third annual meeting of stockholders that is held after the first organizational meeting of the Board of Directors, with the directors in each such class to hold office until their successors are elected and qualified. If the number of directors is changed by the Board of Directors, then any newly-created directorships or any decrease in directorships shall be so apportioned among such classes as to make all such classes as nearly equal in number as possible; provided, however, that no decrease in the number of directors shall shorten the term of any incumbent director. At each annual meeting of the stockholders of the Corporation, subject to the rights of the holders of any class or series of capital stock having a preference over Common Stock as to dividends or upon liquidation, the successors of the class of directors the term of which expires at such meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders of the Corporation held in the third year following the year of such election.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the Bylaws of the Corporation; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as set forth therein.

ARTICLE VII

The election of directors at an annual or special meeting of stockholders of the Corporation need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

A. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or an officer of the Corporation against expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred thereby in connection with such action, suit or proceeding to the fullest extent permitted by the Delaware Corporation Law and any other applicable law as shall be from time to time in effect. Such right of indemnification shall not be deemed to be exclusive of any rights to which any such director or officer may otherwise be entitled. The provisions of this Article VIII--Section A shall be deemed to constitute a contract between the Corporation and each director and officer of the Corporation serving in such capacity at any time while this Article VIII–Section A is in effect, and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

B. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person 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 including service with respect to an employee benefit plan, against expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred thereby in connection with such action, suit or proceeding to the extent permitted by and in the manner set forth in the Delaware Corporation Law and any other applicable law as shall be from time to time in effect. Such right of indemnification shall not be deemed to be exclusive of any other rights to which any such person may otherwise be entitled.

ARTICLE IX

To the fullest extent permitted by the Delaware Corporation Law, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. In furtherance thereof, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware Corporation Law, as currently in existence or hereafter amended, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware Corporation Law hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of directors shall be eliminated or limited to the full extent authorized by the Delaware Corporation Law, as so amended.

ARTICLE X

A. Special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the President or Chief Executive Officer of the Corporation, the Chairperson of the Board of Directors or the Board of Directors or a Committee of the Board of Directors which has been duly designated by the Board of Directors and the powers and authority of which, as provided in a resolution of the Board of Directors or in the Bylaws of the Corporation, include the power to call special meetings of the stockholders. Such special meetings may not be called by any other person or persons.

B. So long as the Corporation has more than one stockholder, no action required to be taken or which may be taken at any annual or special meeting of the stockholders of the Corporation may be taken without such a meeting, and the power of the stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

ARTICLE XI

Notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the capital stock of the Corporation required by law, this Certificate of Incorporation or any designation of the Preferred Stock, the affirmative vote of at least fifty percent (50%) of the voting power of all of the then outstanding shares of the capital stock, voting together as a single class, shall be required to amend, alter or appeal any provision contained in this Certificate of Incorporation.

ARTICLE XII

The name and mailing address of the incorporator of the Corporation is:

Elliot Hinds
McDermott, Will & Emery
2049 Century Park East, 34th Floor
Los Angeles, California 90067

THE UNDERSIGNED, being the sole incorporator herein named, for the purpose of forming a corporation pursuant to the Delaware Corporation Law, does make this certificate, hereby declaring and certifying that the facts stated herein are true, and accordingly have hereunto set my hand as of July 24, 2002.

Elliot Hinds, Sole Incorporator

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MOLINA HEALTHCARE, INC.", FILED IN THIS OFFICE ON THE SECOND DAY OF MAY, A.D. 2013, AT 7:07 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3551135 8100
SR# 20234315728

Authentication: 204893182
Date: 12-22-23

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:19 PM 05/02/2013
FILED 07:07 PM 05/02/2013
SRV 130520630 - 3551135 FILE

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
MOLINA HEALTHCARE, INC.

Molina Healthcare, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY as follows:

1. The Corporation hereby amends and restates Article IV, Section A of its Certificate of Incorporation (the "Certificate of Incorporation") to read in its entirety as follows:

"A. The total number of shares of all classes of capital stock which the Corporation shall have the authority to issue is 170,000,000, consisting of (a) 150,000,000 shares of Common Stock, par value $0.001 per share ("Common Stock"), and (b) 20,000,000 shares of Preferred Stock, par value $0.001 per share ("Preferred Stock")."

2. The foregoing amendment of the Certificate of Incorporation has been duly approved by the Board of Directors of the Corporation in accordance with Sections 141 and 242 of the General Corporation Law of the State of Delaware.

3. The foregoing amendment of the Certificate of Incorporation has been duly approved by the stockholders of the Corporation in accordance with Sections 228 and 242 of the General Corporation Law of the State of Delaware.

4. The foregoing amendment of the Certificate of Incorporation was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware.

*****

IN WITNESS WHEREOF, this Certificate of Amendment has been executed on behalf of the Corporation by its Chief Executive Officer on this 2nd day of May, 2013.

Molina Healthcare, Inc.

Joseph M. Molina MD

Joseph M. Molina, M.D.
Chief Executive Officer

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MOLINA HEALTHCARE, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF MAY, A.D. 2019, AT 6:25 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3551135 8100
SR# 20234315728

Authentication: 204893181
Date: 12-22-23

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:25 PM 05/09/2019
FILED 06:25 PM 05/09/2019
SR 20193729983 - File Number 3551135

CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION OF MOLINA HEALTHCARE, INC.

Pursuant to §242 of the General Corporation Law of the State of Delaware

The undersigned, for purposes of amending the Certificate of Incorporation, as amended (the "Certificate") of Molina Healthcare, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: The name of the corporation is Molina Healthcare, Inc. (the "Corporation").

SECOND: Article V, Paragraph B of the Certificate is hereby amended to read in its entirety, as follows:

B. Subject to the special rights of the holders of any class or series of stock to elect directors:

1. Until the election of directors at the Corporation's annual meeting of stockholders in 2022, pursuant to Section 141(d) of the Delaware Corporation Law, the Board of Directors shall be divided into three classes of directors, Class I, Class II, and Class III (each class as nearly equal in number as possible). Each director elected at or prior to the Corporation's annual meeting of stockholders in 2019 shall be elected for a term expiring on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected. Each Class III director elected at the Corporation's annual meeting of stockholders in 2020 shall be elected to a one-year term expiring at the Corporation's annual meeting of stockholders in 2021. Each Class III and Class I director elected at the Corporation's annual meeting of stockholders in 2021 shall be elected to a one-year term expiring at the Corporation's annual meeting of stockholders in 2022. Commencing with the Corporation's annual meeting of stockholders in 2022, the Board of Directors shall no longer be divided into classes, and all directors shall be elected for a one-year term expiring at the next annual meeting of stockholders.

2. Prior to the Corporation's annual meeting of stockholders in 2022, if the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class. In no case will a decrease in the number of directors shorten the term of any incumbent director. Except as otherwise provided in the Bylaws of the Corporation, the directors shall be elected at the annual meeting of the stockholders, and each director elected shall hold office until the annual meeting of stockholders at which that director's term expires and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal.

3. Any director or the whole Board of Directors may be removed from office at any time with the affirmative vote of the holders of a majority of the voting power of the then issued and outstanding shares of the Corporation's stock entitled to vote at an election of directors; provided, however, (i) until the Board of Directors ceases to be classified at the Corporation's annual meeting of stockholders in 2022, such removal may only be for cause, and (ii) commencing with the Corporation's annual meeting of stockholders in 2022, such removal may be with or without cause.

THIRD: Except as expressly amended herein, all other provisions of the Certificate shall remain in full force and effect.

FOURTH: That the foregoing amendments were duly adopted by the Board of Directors and by the stockholders of the Corporation in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of the Corporation, does hereby execute this Certificate of Amendment to the Certificate of Incorporation, as amended, this 8th day of May, 2019.

MOLINA HEALTHCARE, INC.

By: _____

Joseph Zubretsky
Chief Executive Officer

Exhibit C

Sixth Amended and Restated Bylaws

SIXTH AMENDED AND RESTATED BYLAWS OF MOLINA HEALTHCARE, INC.

a Delaware corporation

Table of Contents

SIXTH AMENDED AND RESTATED BYLAWS
OF
MOLINA HEALTHCARE, INC.

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is Corporation Service Company.

Section 1.2 Other Offices. The Corporation may also have offices and keep the books and records of the Corporation, except as may otherwise be required by law, at such other places both within and outside the State of Delaware as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine or the business of the Corporation may require.

ARTICLE II

STOCKHOLDERS' MEETINGS

Section 2.1 Place of Meetings. All meetings of the stockholders, whether annual or special, shall be held at an office of the Corporation or at such other place, within or outside the State of Delaware, as may be fixed from time to time by the Board of Directors.

Section 2.2 Annual Meetings.

(a) The annual meeting of the stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of annual meeting, at which such stockholders shall elect members to the Board of Directors and transact such other business as may properly be brought before such meeting. Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting of stockholders, (ii) by or at the direction of the Board of Directors, (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in Section 2.2(b) or, if applicable, Section 2.13, who is entitled to vote at such meeting and who complied with the notice procedures set forth in Section 2.2(b) or Section 2.13, as applicable. In lieu of holding an annual meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any annual meeting of stockholders may be held solely by means of remote communication, pursuant to Section 2.12.

(b) (1) At an annual meeting of the stockholders, only such business as shall have been properly brought before such meeting shall be conducted. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.2(c) of these Amended and Restated Bylaws (these “Bylaws”), (i) such stockholder must have given timely notice thereof in writing to the Secretary of the Corporation; (ii) such other business

must be a proper matter for stockholder action under the General Corporation Law of the State of Delaware; (iii) if such stockholder, or the beneficial owner on whose behalf any such nomination or proposal is made (such stockholder or beneficial owner, a "Holder"), has provided the Corporation with a Solicitation Notice (as such term is hereinafter defined), such Holder must, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such Holder to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice or, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal; and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section 2.2(b), the Holder proposing such nomination or business must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 2.2. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting of the stockholders; provided, however, that in the event that the date of the annual meeting is scheduled more than thirty (30) days prior to the anniversary of the preceding year's annual meeting, notice by the stockholder, to be timely, must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting of the stockholders commence a new time period for the giving of a stockholder's notice as described above (the "Stockholder's Notice").

(2) The Stockholder's Notice shall set forth:

(i) as to each person that the stockholder proposes to nominate for election or reelection as a director:

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

(B) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understanding during the past three years, and any other material relationships, between or among the stockholder and its affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and each proposed nominee's respective affiliates and associates, and others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the stockholder making the nomination or on whose behalf the nomination is made, or any affiliate or associate thereof or

any person acting in concert therewith, were the "registrant" for purposes of Item 404 and the nominee were a director or executive officer of such registrant;

(C) a list of all positions held by any proposed nominee as an officer or director of any competitor (as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended, within the three (3) years preceding the submission of the Stockholder Notice; and

(D) a completed and signed questionnaire, representation and agreement required by subsection 2.2(f) (and the Corporation may require any proposed nominee to furnish such other information as may be reasonably required by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence or lack thereof, of the nominee);

(ii) as to any other business that such stockholder proposes to bring before the meeting:

(A) a brief description of the business desired to be brought before such meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such Holder, if any, on whose behalf such proposal is made; and

(B) a description of all agreements, arrangements and understandings, direct and indirect, between such Holder and any other person or persons (including their names), in connection with the proposal of such business.

(iii) as to the Holder, and if the Holder is an entity, as to each director, executive officer, managing member or control person of such entity (each such individual and control person, a "control person"):

(A) the name and address of such Holder and control person, as applicable;

(B) the following information regarding the ownership interests of the Holder and control persons, as applicable, which shall be supplemented not later than 10 days after the record date for the meeting to disclose such interests as of the record date:

(1) the class and number of shares of the Corporation that are owned beneficially and of record by the Holder and by any control person;

(2) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of such Holder or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any

class or series of the Corporation's stock, or maintain, increase or decrease the voting power of the Holder or control person with respect to shares of the Corporation (any such agreement, arrangement or understanding, a "Derivative Instrument");

(3) a description of any proxy, contract, arrangement, understanding, or relationship with respect to a nomination or other business between or among such Holder, any of its affiliates or associates, and any others acting in concert with any of the foregoing, including in the case of a nomination, the nominee or pursuant to which such Holder has a right or obligation to vote any shares of any security of the Corporation;

(4) a description of the terms of and number of shares subject to any short interest in any security of the Corporation (for purposes of this Section 2.2(b), a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security);

(5) a description of any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or limited liability company or similar entity in which such Holder or any control person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, is the manager, managing member or directly or indirectly owns an interest in the manager or managing member of a limited liability company or similar entity;

(6) a description of the terms of and number of shares subject to any performance-related fees (other than an asset-based fee) to which such Holder or control person is entitled based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice;

(7) a description of the terms of and number of shares subject to any arrangements, rights, or other interests described in Sections 2.2(b)(iii)(B)(2)-(6) held by members of such Holder's or control person's immediate family sharing the same household; and

(8) any other information relating to the Holder or control person, or any person who would be considered a participant in a solicitation with such Holder or control person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the 1934 Act and the rules and regulations thereunder;

(iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to vote or cause to be voted its stock at the meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination; and

(v) whether either such Holder intends (or is part of a group that intends) to deliver a proxy statement and form of proxy to holders of, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares to elect such nominee or nominees or, in the case of the proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal (an affirmative statement of such intent, a "Solicitation Notice").

For purposes of these Bylaws, the term "affiliate" or "affiliates" and "associate" or "associates" shall have the meanings ascribed thereto under the General Rules and Regulations under the 1934 Act.

(c) Notwithstanding anything in the second sentence of Section 2.2(b(1) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased effective after the time period for which nominations would otherwise be due under Section 2.2(b) and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section 2.2 (b) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by Corporation.

(d) Notwithstanding the foregoing provisions of this Section 2.2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting pursuant to Rule 14a-8 under the 1934 Act, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(e) For purposes of this Section 2.2, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(f) To be eligible to be a nominee for election or reelection by a stockholder pursuant to Section 2.2(b) or by an Eligible Stockholder pursuant to Section 2.13, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.2(b) or Section 2.13, as applicable), to the Secretary at the principal offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) of such person that such person:

(1) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the 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, or

(ii) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law,

(2) is not and will not become a party to any agreement, 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 service or action as a director that has not been disclosed to the Corporation, and

(3) would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

Section 2.3 Notice of Annual Meeting. Written notice of the annual meeting stating the place, date and time of the meeting, shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. In lieu of holding an annual meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any annual meeting of stockholders may be held solely by means of remote communication in accordance with Section 2.12.

Section 2.4 Stockholders' List. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal place of business. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the

examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.5 Special Meetings.

(a) Pursuant to the Certificate of Incorporation, special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the President or Chief Executive Officer of the Corporation, the Chairperson of the Board of Directors, the Board of Directors or by a committee of the Board of Directors which has been duly designated by the Board of Directors and the powers and authority of which, as provided in a resolution of the Board of Directors or in the Bylaws of the Corporation, include the power to call such meetings. Such special meetings may not be called by any other person or persons.

(b) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Secretary of the Corporation. No business may be transacted at such special meeting, otherwise than specified in such notice or as resolved by the Board of Directors. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty- five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the Secretary shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 2.6 of these Bylaws. If the notice is not given within one hundred (100) days after the receipt of the request, the person or persons properly requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at of the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving notice provided for in these Bylaws who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.5(c). In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if a Stockholder's Notice (as provided pursuant to Section 2.2(b) of these Bylaws) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

Section 2.6 Notice of Special Meetings. Written notice of a special meeting, stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation. In lieu of holding a special meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any special meeting of stockholders may be held solely by means of remote communication in accordance with Section 2.12.

Section 2.7 Quorum; Adjournment. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, by the Certificate of Incorporation or by these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting or, in the absence of such person, any officer entitled to preside at or act as secretary of such meeting, or the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, of the place, date and hour of the adjourned meeting, until a quorum shall again be present or represented by proxy. At the adjourned meeting at which a quorum shall be present or represented by proxy, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including, without limitation, its own stock, held by it in a fiduciary capacity.

Section 2.8 Conduct of Business. (a) Only persons who are nominated in accordance with the procedures set forth in Section 2.2 or Section 2.5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in Section 2.2 or 2.5. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded. Notwithstanding the foregoing provisions of this Section 2.8, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(b) At every meeting of the stockholders, the President or, in his or her absence, such other person as may be appointed by the Board of Directors, shall act as chairman of the meeting. The Secretary of the Corporation or, in his or her absence, such other person as designated by the chairman of the meeting, shall act as secretary of the meeting. The chairman of the meeting shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith or, at the chairman's discretion, it may be conducted otherwise in accordance with the wishes of the stockholders in attendance. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. The chairman shall also conduct the meeting in an orderly manner, rule on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters with fairness and good faith toward all those entitled to take part. Without limiting the foregoing, the chairman of the meeting may (a) restrict attendance at any time to bona fide stockholders of record and their proxies and other persons as invited by the chairman or Board of Directors, (b) restrict use of audio or video recording devices at the meeting, and (c) impose reasonable limits on the amount of time taken up at the meeting on discussion in general or on remarks by any one stockholder. Should any person in attendance become unruly or obstruct the meeting proceedings, the chairman shall have the power to have such person removed from the meeting. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 2.8.

Section 2.9 Voting. When a quorum is present at any meeting, and subject to the provisions of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or by these Bylaws or any other applicable law or the rules of any stock exchange on which the Corporation's shares are listed in respect of the vote that shall be required for a specified action, the vote of the holders of a majority of the shares having voting power, present in person or represented by proxy and entitled to vote on such matter, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the General Corporation Law of the State of Delaware or of the Certificate of Incorporation or of these Bylaws or of such other applicable law or the rules of any stock exchange on which the Corporation's shares are listed, a different vote is required in which case such express provision shall govern and control the decision of such question. Each stockholder shall have one vote for each share of stock having voting power registered in his name on the books of the Corporation, except as otherwise provided in the Certificate of Incorporation.

Section 2.10 Proxies.

(a) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) A stockholder may issue a valid proxy by (i) executing a written authorization therefor identifying the person or persons authorized to act for such stockholder by proxy or (ii) transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission, provided that the telegram, cablegram or other means of electronic transmission either sets forth or is submitted with information from which it can be

determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. A copy, facsimile transmission or other reliable reproduction of a written or electronically-transmitted proxy authorized by this Section 2.10 may be substituted for or used in lieu of the original writing or electronic transmission. Each proxy shall be delivered to the inspectors of election prior to or at the meeting.

Section 2.11 Inspectors. Either the Board of Directors or, in the absence of designation of inspectors by the Board of Directors, the chairman of any meeting of the stockholders may, in its or such person's discretion, appoint one (1) or more inspectors to act at any meeting of the stockholders. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Such inspectors shall perform such duties as shall be specified by the Board of Directors or the chairman of the meeting. Inspectors need not be Stockholders, employees, officers or directors of the Corporation. No director or nominee for the office of director shall be appointed as any such inspector.

Section 2.12 Meetings by Remote Communication. If authorized by the Board of Directors, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.13 Proxy Access for Director Nominations.

(a) The Corporation shall include in its proxy statement and/or on its form of proxy or ballot (collectively, "proxy materials") for an annual meeting of stockholders the name of, and the Required Information (as defined below) relating to, any nominee for election or reelection to the Board who satisfies the eligibility requirements in this Section 2.13 (a "Stockholder Nominee") and who is identified in a Stockholder Notice that complies with Section 2.2(b)(2) and that in addition complies with Section 2.13(f) and that is timely delivered pursuant to Section 2.13(g) by a stockholder on behalf of one or more beneficial owners (such stockholder or beneficial owner, a "Holder"), but in no case more than twenty (20) Holders, who:

(1) elect(s) at the time of delivering the Stockholder Notice to have such Stockholder Nominee included in the Corporation's proxy materials,

(2) as of both the date of the Stockholder Notice, and the record date for determining stockholders entitled to vote at the annual meeting of stockholders, (A) own(s)

(as defined below in Section 2.13(c)) a number of shares that represents at least 3% of the outstanding shares of the Corporation entitled to vote in the election of directors as of the most recent date for which such amount is disclosed in any filing by the Corporation with the SEC prior to the submission of the Stockholder Notice (the "Required Shares") and (B) has or have owned (as defined below in Section 2.13(c)) continuously the Required Shares (as adjusted for any stock splits, stock dividends, or similar events) for at least the three (3)-year period preceding the date of the Stockholder Notice, and must continue to hold the Required Shares through the annual meeting date, and

(3) satisfies or satisfy the additional requirements in these Bylaws (such Holder or Holders collectively, an "Eligible Stockholder"). For the avoidance of doubt, in the event of a nomination by a group of Holders, any and all requirements and obligations for an individual Eligible Stockholder set forth in this Section 2.13, including the minimum holding period, shall apply to each member of such group, provided that the Required Shares shall be owned by the group of Holders in the aggregate. Should any Holder withdraw from a group of Holders constituting an Eligible Stockholder at any time prior to the annual meeting of stockholders, the remaining Holders shall be deemed to own only the shares owned by the remaining members of the group in determining if the Holders continue to constitute an Eligible Stockholder.

(b) For purposes of satisfying the ownership requirement under Section 2.13(a):

(1) the outstanding shares of the Corporation owned by one or more Holders may be aggregated, provided that the number of Holders whose ownership of shares is aggregated for such purpose shall not exceed twenty (20), and

(2) a group of funds under common management and investment control shall be treated as one Holder.

(c) For purposes of this Section 2.13, an Eligible Stockholder "owns" only those outstanding shares of the Corporation as to which the Holder possesses both;

(1) the full voting and investment rights pertaining to the shares and

(2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares:

(i) sold by such Holder or any of its affiliates in any transaction that has not been settled or closed,

(ii) borrowed by such Holder or any of its affiliates for any purposes or purchased by such Holder or any of its affiliates pursuant to an agreement to resell, or

(iii) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of:

(A) reducing in any manner, to any extent or at any time in the future, such Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or

(B) hedging, offsetting, or altering to any degree gain or loss arising from the full economic ownership of such shares by such Holder or affiliate.

A Holder "owns" shares held in the name of a nominee or other intermediary so long as the Holder 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 Holder's ownership of shares shall be deemed to continue during any period in which the Holder has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the Holder. A Holder's ownership of shares shall be deemed to continue during any period in which the Holder has loaned such shares provided that the Holder has the power to recall such loaned shares on no more than five (5) business days' notice and recalls such loaned shares back to its own possession not more than five (5) business days after being notified that its Stockholder Nominee will be included in the Corporation's proxy material for the relevant annual meeting and holds the recalled shares through date of the annual meeting. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board. For purposes of this Section 2.13, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the 1934 Act.

(d) No Holder may be a member of more than one group of Holders constituting an Eligible Stockholder under this Section 2.13 per each annual meeting of stockholders.

(e) For purposes of this Section 2.13, the "Required Information" that the Corporation will include in its proxy materials is:

(1) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy materials by the applicable requirements of the 1934 Act and the rules and regulations thereunder; and

(2) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder, not to exceed 500 words, in support of its Stockholder Nominee, which must be provided at the same time as the Stockholder Notice for inclusion in the Corporation's proxy materials for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation may omit from its proxy materials any information, including all or a portion of any Statement, if the

Corporation in good faith believes such information (A) is not true and correct in all material respects or omits to state a material statement necessary to make the statements therein not misleading; (B) directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (C) would violate any applicable law or regulation. Nothing in this Section 2.13 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(f) The Stockholder Notice shall set forth the information required under Section 2.2(b) (2) of these Bylaws and in addition shall set forth:

(1) a copy of the Schedule 14N that has been or concurrently is filed with the Securities and Exchange Commission under Rule 14a-18 under the 1934 Act;

(2) the details of any relationship not disclosed in the Schedule 14N that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(3) an executed written agreement by the Eligible Stockholder addressed to the Corporation, setting forth the following additional agreements, representations, and warranties:

(i) a representation and warranty as to the number of shares of the Corporation it owns and has owned (as defined in Section 2.13(c)) continuously for at least three years as of the date of the Stockholder Notice and an agreement to continue to own the Required Shares through the date of the annual meeting, which statement shall also be included in the written statements set forth in Item 4 of the Schedule 14N filed by the Eligible Stockholder with the Securities and Exchange Commission, and a representation and warranty that it intends to continue to satisfy the eligibility requirements described in this Section 2.13 through the date of the annual meeting;

(ii) the Eligible Stockholder's agreement to provide written statements from the record holder and intermediaries as required under Section 2.13(h) verifying the Eligible Stockholder's continuous ownership of the Required Shares, such statements to be delivered within five (5) business days after the date of the Stockholder Notice and as of the business day immediately preceding the date of the annual meeting;

(iii) the Eligible Stockholder's representation and agreement that the Eligible Stockholder (including each member of any group of Holders that together is an Eligible Stockholder under this Section 2.13):

(A) did not acquire the Required Shares with the intent to change or influence control at the Corporation, and does not presently have such intent,

(B) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 2.13,

(C) has not engaged and will not engage in a, and has not been and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the 1934 Act (or any successor rules), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board, and

(D) will not distribute to any Stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and

(iv) the Eligible Stockholder's agreement to:

(A) assume all liability stemming from any legal or regulatory violation arising out of any statements or communications made by the Eligible Stockholder to the Corporation, its stockholders or any other persons in connection with the nomination or election of directors, including, without limitation, the Stockholder Notice,

(B) indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees, individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of the Eligible Stockholder's actions, including the provision of any information in the Stockholder Notice or any other communication by the Eligible Stockholder (including with respect to any group member) with the Corporation, in connection with any nomination submitted by the Eligible Stockholder pursuant to this Section 2.13,

(C) in the event that any information in the Stockholder Notice, or any other communication by the Eligible Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made therein not misleading, or the Eligible Stockholder (including any group member) discovers that it has failed to continue to satisfy the eligibility requirements described in this Section 2.13, promptly (and in any event within 48 hours of discovering such misstatement, omission or failure to satisfy eligibility) notify the Corporation and any other recipient of such misstatement or omission and of the information required to correct the misstatement or omission, or of such failure to satisfy eligibility;

(D) comply with all other laws and regulations applicable to the Eligible Stockholder in connection with any solicitation in connection with the annual meeting,

(E) file all materials described below in Section 2.13(h)(3) with the Securities and Exchange Commission, regardless of whether any such filing

is required under Regulation 14A under the 1934 Act or whether any exemption from filing is available for such materials under Regulation 14A, and

(F) provide to the Corporation prior to the annual meeting such additional information as may be reasonably requested by the Corporation in order for the Corporation to comply with its disclosure obligations under applicable law, determine the Eligible Stockholder's satisfaction of the requirements of this Section 2.13 and ascertain the Stockholder Nominee's eligibility for nomination pursuant to this Section 2.13; and

(4) in the case of a nomination by a group of Holders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including any withdrawal of the nomination.

The information and documents required by this Section 2.13(f) shall be: (i) provided with respect to and executed by each Holder whose shares are aggregated for purposes of constituting an Eligible Stockholder, in the case of a group; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Stockholder Nominee or group member that is an entity. The Stockholder Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 2.13(f) (other than such information and documents contemplated to be provided after the date the Stockholder Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(g) To be timely under this Section 2.13, the Stockholder Notice must be received by the secretary of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the date the definitive proxy statement was first released to Stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is scheduled more than thirty (30) days prior to or more than sixty (60) days following the anniversary of the preceding year's annual meeting, the Stockholder Notice, to be timely, must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting, or the announcement thereof, commence a new time period for the giving of the Stockholder Notice as described above.

(h) An Eligible Stockholder (or in the case of a group, each Holder whose shares are aggregated for purposes of constituting an Eligible Stockholder) must:

(1) within five (5) business days after the date of the Stockholder Notice, and on the last business day immediately prior to the date of the annual meeting, provide one (1) or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, verifying that the Eligible Stockholder owns, and has owned continuously for the preceding three (3) years, the Required Shares,

(2) include in the written statements provided pursuant to Item 4 of Schedule 14N filed with the Securities and Exchange Commission a statement certifying that it owns and continuously has owned, as defined in Section 2.13(c), the Required Shares for at least three (3) years,

(3) file with the Securities and Exchange Commission any solicitation or other communication relating to the annual meeting at which any Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A under the 1934 Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A, and

(4) as to any group of funds whose shares are aggregated for purposes of constituting an Eligible Stockholder, within five (5) business days after the date of the Stockholder Notice, provide documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management and investment control.

(i) Within the time period specified in Section 2.13(g) for delivery of the Stockholder Notice, a Stockholder Nominee must deliver to the Secretary of the Corporation the questionnaire, representation and agreement set forth in Section 2.2(f). At the request of the Corporation, the Stockholder Nominee must promptly, but in any event within five (5) business days of such request, submit any additional completed and signed questionnaires required of the Corporation's directors and provide to the Corporation such other information as it may reasonably request in order for the Corporation to comply with its disclosure obligations under applicable law, determine the Eligible Stockholder's satisfaction of the requirements of this Section 2.13 or ascertain the Stockholder Nominee's eligibility for nomination pursuant to this Section 2.13. The Corporation may request such additional information as necessary to permit the Board to determine if each Stockholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the shares of the Corporation are listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board in determining and disclosing the independence of the Corporation's directors.

(j) Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, and a stockholder may not, after the last day on which a Stockholder Notice would be timely, cure in any way any defect preventing the nomination of the Stockholder Nominee, if:

(1) the Secretary of the Corporation receives notice pursuant to Section 2.2(b) of these Bylaws that a stockholder intends to nominate a person for election to the Board, which stockholder does not elect to have its nominee(s) included in the Corporation's proxy materials pursuant to this Section 2.13,

(2) (A) the Eligible Stockholder materially breaches any of its agreements set forth in the Stockholder Notice, (B) the Board of Directors, acting in good faith, determines that the Eligible Stockholder has provided representations and warranties or other

information to the Company in connection with such nomination (including without limitation in the Stockholder Notice) that was untrue, or ceases to be true, in any material respect or omitted, or omits, to state a material fact necessary to make the statements made therein not misleading, or (C) the Stockholder Nominee withdraws his or her consent or becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Stockholder Nominee provided for herein,

(3) the Eligible Stockholder withdraws its nomination,

(4) the Board of Directors, acting in good faith, after consultation with outside counsel, determines that such Stockholder Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule, regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded, or

(5) the Stockholder Nominee (A) is not independent under the listing standards of the principal U.S. exchange upon which the shares of the Corporation are listed, any applicable rules of the Securities and Exchange Commission, and any publicly disclosed standards used by the Board in determining and disclosing the independence of the Corporation's directors, (B) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the Corporation are listed, or as a "non-employee director" under Rule 16b-3 under the 1934 Act (or any successor provision), (C) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (D) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten years, or (E) is or has been subject to any order, judgement, decree, event or circumstance specified in Rule 506(d)(1) under the Securities Act of 1933, as amended (or successor Rule), such that the exemption under Rule 506 (or successor Rule) would be unavailable to the Corporation were the Stockholder Nominee a member of the Board.

(k) Notwithstanding anything to the contrary contained in this Section 2.13, the Board may declare a nomination to be invalid (and shall do so in the case of paragraphs 2.13(k)(2) and (3) below), and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(1) the Board of Directors, acting in good faith, determines that the Eligible Stockholder has failed to continue to satisfy the eligibility requirements described in this Section 2.13;

(2) the Eligible Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 2.13, or

(3) the Eligible Stockholder withdraws its nomination.

(l) The number of Stockholder Nominees appearing in the Corporation's proxy materials with respect to an annual meeting of stockholders (including any Stockholder Nominee whose name was submitted for inclusion in the Corporation's proxy materials but who is nominated by the Board as a Board nominee), together with any nominees who were previously elected to the Board as Stockholder Nominees at any of the preceding two (2) annual meetings and who are re-nominated for election at such annual meeting by the Board and any Stockholder Nominee who was qualified for inclusion in the Corporation's proxy materials but whose nomination is subsequently withdrawn, shall not exceed (the "Maximum Number") the greater of (i) two (2) or (ii) 20% of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 2.13 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number below 20%. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.13 exceeds this Maximum Number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Maximum Number is reached, going in order of the number (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as owned in its respective Stockholder Notice submitted to the Corporation. If the Maximum Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached. In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in Section 2.13(g) but before the date of the annual meeting, and the Board resolves to reduce its size in connection therewith, the Maximum Number shall be calculated based on the number of directors as so reduced.

(m) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of Stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least 25% of the votes cast in favor of the Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 2.13 for the next two annual meetings.

(n) This Section 2.13 provides the exclusive method for a stockholder to include nominees for election to the Board in the Corporation's proxy materials.

(o) The interpretation of, and compliance with, any provision of this Section 2.13, including the representations, warranties and covenants contained herein, shall be determined by the Board or, in the discretion of the Board, one or more of its designees, in each case acting reasonably and in good faith.

ARTICLE III

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 which may exercise all such powers of the Corporation and do all such acts and things as are not, by the General Corporation Law of the State of Delaware nor by the Certificate of Incorporation nor by these Bylaws, directed or required to be exercised or done by the stockholders.

Section 3.2 Number and Qualifications of Directors.

(a) The number of directors which shall constitute the whole Board of Directors shall be no less than seven and no more than eleven; provided that until changed by resolution of the Board of Directors, the number of directors shall be fixed at eleven. Except as otherwise required by applicable law, the Certificate of Incorporation or Section 3.3 of this Article III, a nominee for director shall be elected by the affirmative vote of a majority of the votes cast with respect to such director, provided that nominees for director shall be elected by the vote of a plurality of the votes cast at any meeting of stockholders for which, as of a date that is ten (10) days in advance of the date on which the Corporation files its definitive proxy statement with the Securities and Exchange Commission (regardless of whether thereafter revised or supplemented), the number of nominees for director exceeds the number of directors to be elected, as determined by the Secretary of the Corporation. For purposes of this Section 3.2, a majority of the votes cast means that the number of shares voted "for" a director exceeds the number of votes cast "against" that director. The following shall not be votes cast: (a) a share whose ballot is marked as withheld; (b) a share otherwise present at the meeting but for which there is an abstention; and (c) a share otherwise present at the meeting as to which a shareholder gives no authority or direction.

If an incumbent director is not elected due to a failure to receive a majority of the votes cast as described above, and his or her successor is not otherwise elected and qualified, such director shall tender his or her offer to resign to the Secretary of the Corporation promptly following the certification of the election results. Within ninety (90) days after the date of the certification of the election results, (i) the Corporate Governance and Nominating Committee will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken and (ii) the Board of Directors will act on such committee's recommendation and publicly disclose its decision and the rationale behind it, provided that any director who tenders his or her offer to resign shall not participate in either the Corporate Governance and Nominating Committee's or Board of Directors' deliberations regarding the offer to resign, and if a quorum of the Corporate Governance and Nominating Committee cannot be met without the presence of the directors who did not receive a majority of the votes cast, then the Board of Directors shall appoint a committee of independent directors to consider the resignation offers and recommend to the Board of Directors whether to accept or reject the resignations, or whether other action should be taken. Directors need not be stockholders.

Section 3.3 Vacancies; Resignation and Removal of Directors.

(a) If the office of any director or directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, or a new directorship is created, the Board of Directors shall choose a successor or successors, or a director to fill the newly created directorship, who shall hold office for the unexpired term (in the case of a vacancy) or until the next election of directors (in the case of a new directorship).

(b) Any director of the Corporation may at any time resign by giving written notice to the Board of Directors, the Chairman of the Board, the President or the Secretary of the Corporation. Such resignation shall take effect upon receipt thereof by the Corporation, or such

later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings inside or outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Compensation of Directors. Directors who are not at the time also a salaried officer or employee of the Corporation or any of its subsidiaries may receive such stated salary for their services and/or such fixed sums and expenses of attendance for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings. Each director, whether or not a salaried officer or employee of the Corporation or any of its subsidiaries, shall be entitled to receive from the Corporation reimbursement for the reasonable expenses incurred by such person in connection with the performance of such person's duties as a director.

Section 3.6 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board shall from time to time by resolution determine, except that the annual meeting of the Board to elect officers of the Corporation for the ensuing year shall be held within ten (10) days after the annual meeting of stockholders. If any day fixed for a regular meeting shall be a legal holiday under the laws of the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day.

Section 3.7 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or at the request in writing of a majority of the directors. Notice of any such meeting, unless waived, shall be given to directors personally, by telephone, by first-class United States mail, postage prepaid or by facsimile or electronic transmission to each director at his or her address as the same appears on the records of the Corporation not later than two days prior to the day on which such meeting is to be held if such notice is delivered personally, by telephone or by facsimile or electronic transmission, and not less than four days prior to the day on which the meeting is to be held if such notice is by first-class United States mail, provided, however, that notice of any such special meeting need not be given to any such member who shall, either before or after such special meeting, submit a signed waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of such notice to such member. . If the Secretary shall fail or refuse to give such notice, then the notice may be given by the President or any one of the directors calling the meeting. Any such meeting may be held at such place as the Board may fix from time to time or as may be specified or fixed in such notice or waiver thereof. Any meeting of the Board of Directors shall be a legal meeting without any notice thereof having been given, if all the directors shall waive notice or be present thereat, and no notice of a meeting shall be required to be given to any director who shall attend such meeting without protesting, prior to or at its

commencement, the lack of such notice to such member.. Notice of any adjourned meeting of the Board of Directors need not be given to any director in attendance.

Section 3.8 Action Without Meeting; Use of Communications Equipment.

(a) Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent to such action in writing or by electronic transmission and such written consent or electronic transmissions are filed with the minutes of proceedings of the Board of Directors.

(b) Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Section 3.9 Quorum and Manner of Acting.

(a) Except as otherwise provided in these Bylaws, a majority of the total number of directors as at the time specified as provided in the Bylaws shall constitute a quorum at any regular or special meeting of the Board of Directors. Except as otherwise provided by statute, by the Certificate of Incorporation or by these Bylaws, the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present. .

(b) The Board of Directors may adopt such rules and regulations not inconsistent with the provisions of these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board may deem to be proper. In the absence of the Chairman of the Board, such person designated by the Board shall preside at Board meetings.

ARTICLE IV
EXECUTIVE AND OTHER COMMITTEES

Section 4.1 Executive Committee. The Board of Directors may, by resolution adopted by a majority of the entire Board of Directors, designate annually three (3) or more of the directors to constitute members or alternate members of an Executive Committee, which Executive Committee shall have and may exercise, between the meetings of the Board of Directors, all of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, including, without limitation, if such Executive Committee is so empowered and authorized by resolution adopted by a majority of the entire Board of Directors, the power and authority to declare a dividend and to authorize the issuance of stock, and may authorize the seal of the Corporation to be affixed to all papers which may require it, except that such Executive Committee shall not have such power or authority in reference to:

(a) amending the Certificate of Incorporation or these Bylaws;

(b) adopting an agreement of merger or consolidation involving the Corporation;

(c) recommending to the stockholders the sale, lease or exchange of all or substantially all of the property and assets of the Corporation;

(d) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution;

(e) taking any action related to the approval or determination of any matter in connection with any business combination;

(f) filling vacancies on the Board of Directors or on any committee of the Board of Directors, including, but not limited to, the Executive Committee; or

(g) amending or repealing any resolution of the Board of Directors which by its terms may be amended or repealed only by the Board of Directors.

The Board of Directors shall have the power at any time to change the membership of the Executive Committee, to fill all vacancies in it and to discharge it, either with or without cause.

Section 4.2 Other Committees. The Board of Directors may, by resolution adopted by a majority of the entire Board of Directors (except to the extent prohibited by law), designate from among the directors one or more other committees, each of which shall have such authority of the Board of Directors as may be specified in the resolution of the Board of Directors designating such committee; provided that no committee shall have the power or authority in reference to the matters described in Section 4.1(a) through 4.1(g) above. A majority of all of the members of such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have the power at any time to change the membership of, to fill all vacancies in and to discharge any such committee, either with or without cause. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

Section 4.3 Procedure; Meeting; Quorum. Regular meetings of the Executive Committee or of any other committee of the Board of Directors, of which no notice shall be necessary, may be held at such times and places as shall be fixed by resolution adopted by a majority of the members thereof. Special meetings of the Executive Committee or any other committee of the Board of Directors shall be called at the request of any member thereof. Notice of each special meeting of the Executive Committee or of any other committee of the Board of Directors shall be delivered personally, by telephone, by first-class United States mail, postage prepaid or by facsimile or electronic transmission to each member thereof not later than one day prior to the day on which such meeting is to be held if such notice is delivered personally, by telephone or by facsimile or electronic transmission and not less than four days prior to the day on which such meeting is to be held if such notice is delivered by first-class United States mail; provided, however, that notice of any such special meeting need not be given to any such member who shall, either before or after such special meeting, submit a signed waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of such notice to such member. Any special meeting of the Executive Committee or any

other committee of the Board of Directors shall be a valid meeting without any notice thereof having been given if all of the members thereof shall waive notice or be present thereat without protesting, prior to or at its commencement, the lack of such notice to such member. Notice of any adjourned meeting of any committee of the Board of Directors need not be given to any director in attendance. Each of the Executive Committee and each other committee of the Board of Directors may adopt such rules and regulations that are not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as the Executive Committee or each other committee of the Board of Directors, as the case may be, may deem to be proper. A majority of the members of the Executive Committee or of any other committee of the Board of Directors shall constitute a quorum for the transaction of business at any meeting thereof, and the vote of a majority of the members thereof present at any meeting thereof at which such a quorum is present shall be the act of the Executive Committee or such other committee, as the case may be. Each of the Executive Committee and each other committee of the Board of Directors shall keep written minutes of its proceedings and shall report on such proceedings to the Board of Directors.

ARTICLE V
OFFICERS

Section 5.1 Executive Officers. The executive officers of the Corporation shall be a President and Chief Executive Officer, a Chief Financial Officer, a Chief Legal Officer, a Treasurer, a Secretary, and such number of executive vice presidents, if any, as the Board of Directors may determine. One person may hold any number of said offices.

Section 5.2 Election, Term of Office and Eligibility. The executive officers of the Corporation shall be elected annually by the Board of Directors, and new or additional officers may be elected at any meeting of the Board. Each officer, except such officers as may be appointed in accordance with the provisions of Section 5.3, shall hold office until the next annual election of officers or until his or her death, resignation or removal. None of the other officers need be members of the Board.

Section 5.3 Subordinate Officers. The Board of Directors may appoint a Controller, such vice presidents, assistant secretaries, assistant treasurers and such other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board may from time to time determine. The Board may, by specific resolution, empower the Chief Executive Officer of the Corporation or the Executive Committee to appoint any such subordinate officers or agents.

Section 5.4 Removal. The President, Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, Chief Operating Officer, Treasurer, Secretary, and any executive vice president may be removed at any time, either with or without cause, but only by the affirmative vote of the majority of the total number of directors as at the time specified by the Bylaws. Any subordinate officer appointed pursuant to Section 5.3 may be removed at any time, either with or without cause, by the majority vote of the directors present at any meeting of the Board or by any committee or officer empowered to appoint such subordinate officers.

Section 5.5 Chairman of the Board. The Chairman of the Board shall, if present, preside at meetings of the Board of Directors. The Chairman of the Board shall be a member of the Board of Directors.

Section 5.6 The President. The President shall be the chief executive officer of the Corporation. He shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by statute, by the Certificate of Incorporation, or by these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. He shall in general perform all duties incident to the office of the president and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 5.7 Other Executive Officers and Executive Vice Presidents. In the event of the absence or disability of the President, the other executive officers of the Corporation, in the order designated, or in the absence of any designation, then in the order of their election, shall perform the duties of the President. The other officers and executive vice presidents of the Corporation shall also perform such other duties as from time to time may be assigned to them by the Board of Directors or by the President of the Corporation.

Section 5.8 The Secretary. The Secretary shall:

(a) Keep the minutes of the meetings of the stockholders and of the Board of Directors;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) Be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized;

(d) Have charge of the stock record books of the Corporation;

(e) In general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him by the Board of Directors or by the chief executive officer of the Corporation.

Section 5.9 The Treasurer. The Treasurer shall:

(a) Receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depositary as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized.

(b) Render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the chief executive officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation;

(c) In general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors or by the chief executive officer of the Corporation.

Section 5.10 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Corporation.

Section 5.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE VI
SHARES OF STOCK

Section 6.1 Regulation. Subject to the terms of any contract of the Corporation, the Board of Directors may make such rules and regulations as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the stock of the Corporation, including the issue of new certificates for lost, stolen or destroyed certificates, and including the appointment of transfer agents and registrars.

Section 6.2 Stock Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series of its stock shall be uncertificated shares; provided, however, that no such resolution shall apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock of the Corporation represented by certificates, and, upon written request to the Corporation's transfer agent or registrar, any holder of uncertificated shares, shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the Corporation. Certificates for shares of the stock of the Corporation shall be respectively numbered serially for each class of stock, or series thereof, as they are issued, shall be impressed with the corporate seal or a facsimile thereof, and shall be signed by the President or other executive officer, and by the Secretary or Treasurer, or an Assistant Secretary or an Assistant Treasurer, provided that such signatures may be facsimiles on any certificate countersigned by a transfer agent other than the Corporation or its employee. Each certificate shall exhibit the name of the Corporation, the class (or series of any class) and number of shares represented thereby, and the name of the holder. Each certificate shall be otherwise in such form as may be prescribed by the Board of Directors.

Section 6.3 Restriction on Transfer of Securities. A restriction on the transfer or registration of transfer of securities of the Corporation may be imposed either by the Certificate of Incorporation or by these Bylaws or by an agreement among any number of

security holders or among such holders and the Corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

A restriction on the transfer of securities of the Corporation is permitted by this Section if it:

(a) Obligates the holder of the restricted securities to offer to the Corporation or to any other holders of securities of the Corporation or to any other person or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(b) Obligates the Corporation or any holder of securities of the Corporation or any other person or any combination of the foregoing to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(c) Requires the Corporation or the holders of any class of securities of the Corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

(d) Prohibits the transfer of the restricted securities to designated persons or classes of persons; and such designation is not manifestly unreasonable; or

(e) Restricts transfer or registration of transfer in any other lawful manner.

Unless noted conspicuously on the security, a restriction, even though permitted by this Section, is ineffective except against a person with actual knowledge of the restriction.

Section 6.4 Transfer of Shares. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the Corporation: (i) in the case of shares represented by a certificate, by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the Corporation or its transfer agent may reasonably require; and (ii) in the case of uncertificated shares, upon the receipt of proper transfer instructions from the registered owner thereof. Except as may be otherwise required by law, the Certificate of Incorporation or the Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

Section 6.5 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the

resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; providing, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.6 Lost Certificate. Any stockholder claiming that a certificate representing shares of stock has been lost, stolen or destroyed may make an affidavit or affirmation of the fact and, if the Board of Directors so requires, advertise the same in a manner designated by the Board, and give the Corporation a bond of indemnity in form and with security for an amount satisfactory to the Board (or an officer or officers designated by the Board), whereupon a new certificate may be issued of the same tenor and representing the same number, class and/or series of shares as were represented by the certificate alleged to have been lost, stolen or destroyed.

ARTICLE VII

BOOKS AND RECORDS

Section 7.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors may from time to time determine.

Section 7.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection by any member of the Board of Directors at all times; and open to inspection by the stockholders at such times, and subject to such regulations as the Board of Directors may prescribe, except as otherwise provided by statute.

Section 7.3 Corporate Seal. The corporate seal shall contain two concentric circles between which shall be the name of the Corporation and the word "Delaware" and in the center shall be inscribed the words "Corporate Seal."

ARTICLE VIII

DIVIDENDS AND RESERVES

Section 8.1 Dividends. The Board of Directors of the Corporation, subject to any restrictions contained in the Certificate of Incorporation and other lawful commitments of the Corporation, may declare and pay dividends upon the shares of its capital stock either out of the surplus of the Corporation, as defined in and computed in accordance with the General Corporation Law of the State of Delaware, or in case there shall be no such surplus, out of the net profits of the Corporation for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the Corporation, computed in accordance with the General Corporation Law of the State of Delaware, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the Board of Directors of the Corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

Section 8.2 Reserves. The Board of Directors of the Corporation may set apart, out of any of the funds of the Corporation available for dividends, a reserve or reserves for any proper purpose and may abolish any such reserve.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall end on the 31st day of December of each year.

Section 9.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 9.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board.

Section 9.4 Contracts and Other Instruments. The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to specific instances.

Section 9.5 Notices. In addition to other means of notice permitted herein, whenever under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws notice is required to be given to any director or stockholder, it shall not be construed to

mean personal notice, but such notice may be given in writing, by mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, or by delivery to a telegraph company, addressed to such director or stockholder at such address as appears on the records of the Corporation, or, in default of other address, to such director or stockholder at the General Post Office in the City of Dover, Delaware, and such notice shall be deemed to be given at the time when the same shall be thus mailed or delivered to a telegraph company.

Section 9.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

Section 9.7 Stock in Other Corporations. Any shares of stock in any other Corporation which may from time to time be held by this Corporation may be represented and voted at any meeting of shareholders of such Corporation by the President or other executive officer, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President or an executive officer. Shares of stock belonging to the Corporation need not stand in the name of the Corporation, but may be held for the benefit of the Corporation in the individual name of the Treasurer or of any other nominee designated for the purpose by the Board of Directors. Certificates for shares so held for the benefit of the Corporation shall be endorsed in blank or have proper stock powers attached so that said certificates are at all times in due form for transfer, and shall be held for safekeeping in such manner as shall be determined from time to time by the Board of Directors.

Section 9.8 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or an officer of the Corporation, against all judgments, fines, amounts paid in settlement and other liability and loss suffered, and all expenses (including, without limitation, attorneys' fees) reasonably incurred thereby in connection with such action, suit or proceeding to the fullest extent permitted by the General Corporation Law of the State of Delaware and any other applicable law as from time to time in effect. Such right of indemnification shall include the right to payment of expenses incurred in defending any proceeding in advance of final disposition of such proceeding upon tendering of any undertaking to repay such expenses required by law as a condition to advancement of such expenses, and shall not be deemed to be exclusive of any rights to which any such director or officer may otherwise be entitled. The foregoing provisions of this Section 9.8(a) shall be deemed to be a contract between the Corporation and each director and officer of the Corporation serving in such capacity at any time while this Section 9.8(a) is in effect, and any

repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts. Notwithstanding the first sentence of Section 9.8(a), except as otherwise provided in Section 9.8(c), the Corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was an 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 all judgments, fines, amounts paid in settlement and other liability and loss suffered, and all expenses (including, without limitation, attorneys' fees) reasonably incurred thereby in connection with such action, suit or proceeding to the extent permitted by and in the manner set forth in and permitted by the General Corporation Law of the State of Delaware and any other applicable law as from time to time in effect. Such right of indemnification may include the right to payment of expenses incurred in defending any proceeding in advance of final disposition of such proceeding upon tendering of any undertaking to repay such expenses required by the board of directors as a condition to advancement of such expenses, and shall not be deemed to be exclusive of any other rights to which any such person may otherwise be entitled. Notwithstanding the first sentence of Section 9.8(b), except as otherwise provided in Section 9.8(c), the Corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

(c) If a claim under subsection (a) or (b) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because he has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(d) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(e) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another Corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(f) To the extent that any director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, he shall be indemnified against all costs and expenses actually and reasonably incurred by him or on his behalf in connection therewith.

(g) Any amendment, repeal or modification of any provision of this Section by the stockholders or the directors of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation with respect to any action or omission occurring prior to the time of such amendment, repeal or modification.

Section 9.9 Amendment of Bylaws.

(a) The stockholders, by the affirmative vote of the holders of a majority of the stock issued and outstanding and having voting power may, at any annual or special meeting if notice of such alteration or amendment of the Bylaws is contained in the notice of such meeting, adopt, amend, or repeal these Bylaws, and alterations or amendments of Bylaws made by the stockholders shall not be altered or amended by the Board of Directors.

(b) The Board of Directors, by the affirmative vote of a majority of the whole Board, may adopt, amend, or repeal these Bylaws at any meeting, except as provided in the above paragraph. Bylaws made by the Board of Directors may be altered or repealed by the stockholders.

ARTICLE X

EXCLUSIVE FORUM

Section 10.1 Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim against the Corporation or any director, officer, or other employee of the Corporation arising pursuant to any provision of the Delaware General Corporation Law, or the Corporation's Certificate of Incorporation or Bylaws (as either may be amended from time to time) or (4) any action

asserting a claim against the Corporation, or any director, officer, or other employee of the Corporation governed by the internal affairs doctrine.

* * * * *

SECRETARY'S CERTIFICATE

ADOPTION

OF

SIXTH AMENDED AND RESTATED BYLAWS

OF

MOLINA HEALTHCARE, INC.

I, the undersigned, do hereby certify:

1. That I am the duly appointed and acting Secretary of Molina Healthcare, Inc., a Delaware corporation (the "Company").

2. That the foregoing Sixth Amended and Restated Bylaws of the Company were adopted by the Board of Directors of the Company (the "Board") by unanimous written consent of the Board effective February 18, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of February, 2019.

Jeff. D. Barlow, Secretary

Exhibit D

Amended and Restated Bylaws

AMENDED AND RESTATED BYLAWS
OF
MOLINA HEALTHCARE, INC.

a Delaware corporation

(as Amended and Restated Effective December 22, 2023)

TABLE OF CONTENTS

AMENDED AND RESTATED BYLAWS
OF
MOLINA HEALTHCARE, INC.

ARTICLE I
OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be maintained in the County of New Castle, State of Delaware, and the registered agent in charge thereof is Corporation Service Company.

Section 1.2 Other Offices. The Corporation may also have offices and keep the books and records of the Corporation, except as may otherwise be required by law, at such other places both within and outside the State of Delaware as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine or the business of the Corporation may require.

ARTICLE II
STOCKHOLDERS' MEETINGS

Section 2.1 Place of Meetings. All meetings of the stockholders held at a physical location, whether annual or special, shall be held at an office of the Corporation or at such other place, within or outside the State of Delaware, as may be fixed from time to time by the Board of Directors. In lieu of holding a meeting of stockholders at a designated place, the Board of Directors may, in its sole discretion, determine that any meeting of stockholders may be held solely by means of remote communication, in accordance with Section 2.12 of these Bylaws.

Section 2.2 Annual and Special Meetings; Nominations.

(a) The annual meeting of the stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of annual meeting, at which such stockholders shall elect members to the Board of Directors and transact such other business as may properly be brought before such meeting. Nominations of persons for election to the Board of Directors of the Corporation may be made at an annual meeting of stockholders or special meeting of stockholders (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) (i) pursuant to the Corporation's notice of meeting of stockholders, (ii) by or at the direction of the Board of Directors, (iii) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in Section 2.2(b) or, if applicable, Section 2.13, who is entitled to vote at such meeting and who complied with the notice procedures set forth in Section 2.2(b) or Section 2.13, as applicable. The foregoing clause (iii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting, as applicable.

(b) Notice of Nominations for Election to the Board of Directors.

(1) (i) A nomination of a person or persons for election to the Board of Directors by any stockholder made pursuant to Section 2.2(a)(iii), and by giving notice in

accordance with this Section 2.2(b), may only be made at such meeting by a stockholder that is present in person. For purposes of this Section 2.2(b), "present in person" shall mean that the stockholder nominating any person for election to the Board of Directors at the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(ii) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (A) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation, (B) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.2(b), (C) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.2(b), and (D) be a stockholder of record at the time of such annual meeting. To be timely, a stockholder's notice shall be delivered to, or mailed and 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 one-year anniversary of the preceding year's annual meeting of the stockholders; provided, however, that in the event that the date of the annual meeting is scheduled more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder, to be timely, must be so delivered, or mailed and received, not more than one hundred twenty (120) days prior to such annual meeting and not later than ninety (90) days prior to such annual meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such meeting is first made (such notice within such time periods, "Timely Notice").

(iii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (A) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (B) provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.2(b), (C) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.2(b) and (D) be a stockholder of record at the time of such special meeting. To be timely, a stockholder's notice for nominations to be made at a special meeting pursuant to this Section 2.2(b) shall be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days prior to nor more than one hundred twenty (120) days prior to such special meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such special meeting was first made.

(iv) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(v) In no event may a Nominating Person (as defined below) provide Timely Notice or "timely" notice as set forth in Section 2.2(b)(1)(iii), as applicable, with respect to a greater number of director candidates than are subject to election by stockholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (A) the conclusion of the time period for Timely Notice, (B) the conclusion of the time period for notice to be "timely" as set forth in Section 2.2(b)(1)(iii) or (C) the tenth day following the date of public announcement of such increase.

(2) To be in proper form for purposes of this Section 2.2(b), a stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person, the Stockholder Information (as defined in Section 2.2(c)(2)(i), except that for purposes of this Section 2.2(b) the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.2(c)(2)(i));

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.2(c)(2)(ii), except that for purposes of this Section 2.2(b) the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.2(c)(2)(ii) and the disclosure with respect to the business to be brought before the meeting in Section 2.2(c)(2)(ii) shall be made with respect to the election of directors at the meeting); and provided that, in lieu of including the information set forth in Section 2.2(c)(2)(ii)(H), the Nominating Person's notice for purposes of this Section 2.2(b) shall include a representation as to whether the Nominating Person intends or is part of a group which intends to deliver a proxy statement and solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Corporation's nominees in accordance with Rule 14a-19 promulgated under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "1934 Act"); and

(iii) As to each candidate whom a Nominating Person proposes to nominate for election as a director:

(A) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the 1934 Act (including such candidate's written consent to being named in a proxy statement and accompanying proxy card relating to the Corporation's next meeting of stockholders at which directors are to be elected and to serving as a director for a full term if elected),

(B) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such

Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant,

(C) a completed and signed written questionnaire as provided for in Section 2.2(f), except that for purposes of a nomination by a stockholder pursuant to a notice given in accordance with this Section 2.2(b), such written questionnaire shall be in the form provided by the Secretary upon written request of any stockholder of record therefor, and

(D) a written representation and agreement as provided for in Section 2.2(f), except that for purposes of a nomination by a stockholder pursuant to a notice given in accordance with this Section 2.2(b), such written representation and agreement shall be in the form provided by the Corporation upon written request of any stockholder of record therefor and shall also include a representation that such candidate for nomination, if elected as a director of the Corporation, (x) will comply with all applicable corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director that are not publicly disclosed (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect), and (y) intends to serve the entire term until the next meeting at which such candidate would face re-election.

For purposes of this Section 2.2(b), the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(3) The Board of Directors may request that any Nominating Person furnish such additional information as may be reasonably required by the Board of Directors. Such Nominating Person shall provide such additional information within ten (10) days after it has been requested by the Board of Directors.

(4) The Board of Directors may also require any proposed candidate for nomination as a director to furnish such other information as may reasonably be requested by the Board of Directors in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon. Without limiting the generality of the foregoing, the Board of Directors may request such other information in order for the Board of Directors to determine the eligibility of such candidate for nomination to be an independent director of the Corporation or to comply with the director qualification standards and additional selection criteria in accordance with the Corporation's Corporate Governance Guidelines. Such other information shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five (5) business days after the request by the Board of Directors has been delivered to, or mailed and received by, the Nominating Person.

(5) A stockholder providing notice of any nomination proposed to be made at a meeting and any candidate for nomination as a director shall further update and

supplement such notice or the materials delivered pursuant to this Section 2.2(b), as applicable, if necessary, so that the information provided or required to be provided, either in such notice or by such candidate, as applicable, pursuant to this Section 2.2(b) shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination, including by changing or adding nominees, or to submit any new nomination.

(6) In addition to the requirements of this Section 2.2(b) with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the 1934 Act with respect to any such nominations. Notwithstanding the foregoing provisions of this Section 2.2(b), unless otherwise required by law, (i) no Nominating Person shall solicit proxies in support of director nominees other than the Corporation's nominees unless such Nominating Person has complied with Rule 14a-19 promulgated under the 1934 Act in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner and (ii) if any Nominating Person (A) provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) promulgated under the 1934 Act, including the provision to the Corporation of notices required thereunder in a timely manner, or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such Nominating Person has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act in accordance with the following sentence, then the nomination of each such proposed nominee shall be disregarded, notwithstanding that the nominee is included as a nominee in the Corporation's proxy statement, notice of meeting or other proxy materials for any annual meeting (or any supplement thereto) and notwithstanding that proxies or votes in respect of the election of such proposed nominees may have been received by the Corporation (which proxies and votes shall be disregarded). If any Nominating Person provides notice pursuant to Rule 14a-19(b) promulgated under the 1934 Act, such Nominating Person shall deliver to the Corporation, no later than seven (7) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the 1934 Act.

(7) No candidate nominated pursuant to this Section 2.2(b) shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with

this Section 2.2(b), as applicable. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.2(b), and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(c) Notice of Business to be Brought Before an Annual Meeting.

(1) (i) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (A) specified in a notice of meeting given by or at the direction of the Board of Directors, (B) if not specified in a notice of meeting, otherwise brought before the meeting by the Board of Directors or the Chair of the Board or (C) otherwise properly brought before the meeting by a stockholder present in person who (1) (x) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.2(c) and at the time of the meeting, (y) is entitled to vote at the meeting, and (z) has complied with this Section 2.2(c) in all applicable respects or (2) properly made such proposal in accordance with Rule 14a-8 under the 1934 Act. The foregoing clause (C) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.5, and stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. For purposes of this Section 2.2(c), "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 2.2(b) and this Section 2.2(c) shall not be applicable to nominations except as expressly provided in Section 2.2(b).

(ii) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (A) provide Timely Notice thereof in writing and in proper form to the Secretary of the Corporation and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.2(c).

(2) To be in proper form for the purposes of this Section 2.2(c), a stockholder's notice shall set forth:

(i) as to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records), (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the

meaning of Rule 13d-3 under the 1934 Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, (C) the date or dates such shares were acquired, (D) the investment intent of such acquisition; and (E) any pledge by such Proposing Person with respect to any of such shares (the disclosures to be made pursuant to the foregoing clauses (A) through (E) are referred to as "Stockholder Information");

(ii) as to each Proposing Person:

(A) the material terms and conditions of any "derivative security" (as such term is defined in Rule 16a-1(c) under the 1934 Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the 1934 Act) or a "put equivalent position" (as such term is defined in Rule 16a-1(h) under the 1934 Act) or other derivative or synthetic arrangement in respect of any class or series of shares of the Corporation ("Synthetic Equity Position") that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such Proposing Person, including, without limitation, (1) any option, warrant, convertible security, stock appreciation right, future or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, (2) any derivative or synthetic arrangement having the characteristics of a long position or a short position in any class or series of shares of the Corporation, including, without limitation, a stock loan transaction, a stock borrow transaction, or a share repurchase transaction or (3) any contract, derivative, swap or other transaction or series of transactions designed to (x) produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, (y) mitigate any loss relating to, reduce the economic risk (of ownership or otherwise) of, or manage the risk of share price decrease in, any class or series of shares of the Corporation, or (z) increase or decrease the voting power in respect of any class or series of shares of the Corporation of such Proposing Person, including, without limitation, due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the holder thereof may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the price or value of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the 1934 Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the 1934 Act solely by reason of Rule

13d-1(b)(1)(ii)(E)) shall not be required to disclose any Synthetic Equity Position that is, directly or indirectly, held or maintained by, held for the benefit of, or involving such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer;

(B) any proportionate interest in shares of the Corporation or Synthetic Equity Position held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which such Proposing Person (1) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, or (2) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of such limited liability company or similar entity;

(C) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(D) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation;

(E) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand;

(F) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(G) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the 1934 Act; and

(H) a representation that such Proposing Person intends (or is part of a group that intends) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal (the disclosures to be made pursuant to the foregoing clauses (A) through (H) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

(iii) as to each item of business that such stockholder proposes to bring before the meeting:

(A) a brief description of the business desired to be brought before such meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person,

(B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of each Proposing Person;

(C) a reasonably detailed description of all agreements, arrangements and understandings, direct and indirect, (1) between or among any Proposing Persons or (2) between or among any Proposing Person and any other person or entity (including their names), in connection with the proposal of such business; and

(D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the 1934 Act; provided, however, that the disclosures required by this Section 2.2(c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

For purposes of this Section 2.2(c), the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(iv) The Board of Directors may request that any Proposing Person furnish such additional information as may be reasonably required by the Board of Directors. Such Proposing Person shall provide such additional information within ten (10) days after it has been requested by the Board of Directors.

(3) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.2(c) shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and

supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(4) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.2(c). The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.2(c), and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(5) This Section 2.2(c) is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the 1934 Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.2(c) with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the 1934 Act with respect to any such business. Nothing in this Section 2.2(c) shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(d) For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the 1934 Act.

(e) [Reserved.]

(f) To be eligible to be a nominee for election or reelection by a stockholder pursuant to Section 2.2(b) or by an Eligible Stockholder pursuant to Section 2.13, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.2(b) or Section 2.13, as applicable), to the Secretary at the principal offices of the Corporation a written questionnaire providing the information requested about the background and qualifications of such person and the background of any other person or entity on whose behalf the nomination is being made and a written representation and agreement (the questionnaire, representation, and agreement to be in the form provided by the Secretary upon written request) of such person that such person:

(1) is not and will not become a party to:

(i) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the 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, or

(ii) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law,

(2) is not and will not become a party to any agreement, 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 service or action as a director that has not been disclosed to the Corporation, and

(3) would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

Section 2.3 Notice of Annual Meetings. Written notice of the annual meeting stating the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting) shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 2.4 Stockholders' List. The Corporation shall prepare, no later than the tenth (10th) day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date) arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of ten (10) days ending on the date before the meeting date: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal place of business. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.4 or to vote in person or by proxy at any meeting of stockholders.

Section 2.5 Special Meetings.

(a) Pursuant to the Certificate of Incorporation (as amended, the "Certificate of Incorporation"), special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time by the President or Chief Executive Officer of the Corporation, the Chair of the Board of Directors, the Board of Directors or by a committee of the Board of Directors which has been duly designated by the Board of Directors and the powers and authority of which, as provided in a resolution of the Board of Directors or in the Bylaws of the Corporation, include the power to call such meetings. Such special meetings may not be called by any other person or persons.

(b) No business may be transacted at such special meeting, other than the business specified in such notice of such meeting. The Corporation may postpone, reschedule or cancel any previously scheduled special meeting of stockholders.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders (but only if the election of directors is a matter specified in the Corporation's notice of meeting) as provided for in Section 2.2(b) of these Bylaws.

Section 2.6 Notice of Special Meetings. Written notice of a special meeting, stating the place, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting), and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 2.7 Quorum; Adjournment. (a) The holders of a majority in voting power of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall be requisite and shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute, by the Certificate of Incorporation or by these Bylaws. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chair of the meeting or, in the absence of such person, any officer entitled to preside at or act as secretary of such meeting, or a majority in voting power of the stockholders entitled to vote thereat, present in person or by remote communication, if applicable, or represented by proxy, shall have the power to adjourn the meeting from time to time in the manner provided in Section 2.7(b) until a quorum is present or represented by proxy. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including, without limitation, its own stock, held by it in a fiduciary capacity.

(b) When a meeting is adjourned to another time or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken or are provided in any other manner permitted by the General Corporation Law of the State of Delaware. At any adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.8 Conduct of Business. (a) Only persons who are nominated in accordance with the procedures set forth in Section 2.2 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in Section 2.2 or 2.5. Except as otherwise provided by law, the chair of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, in addition to the power and duty to make any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the chair of the meeting). Notwithstanding the foregoing provisions of this Section 2.8, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(b) At every meeting of the stockholders, the President or, in his or her absence, such other person as may be appointed by the Board of Directors, shall act as chair of the meeting. The Secretary of the Corporation or, in his or her absence, such other person as designated by the chair of the meeting, shall act as secretary of the meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chair of the meeting. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chair of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of the chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine;

(iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 2.8.

Section 2.9 Voting. When a quorum is present at any meeting, and subject to the provisions of the General Corporation Law of the State of Delaware, the Certificate of Incorporation, these Bylaws and any other applicable law or the rules of any stock exchange on which the Corporation's shares are listed in respect of the vote that shall be required for a specified action, the vote of the holders of a majority in voting power of the shares present in person or represented by proxy and entitled to vote on such matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the General Corporation Law of the State of Delaware or of the Certificate of Incorporation or of these Bylaws or of such other applicable law or the rules of any stock exchange on which the Corporation's shares are listed, a different vote is required, in which case such express provision shall govern and control the decision of such question. Each stockholder shall have one vote for each share of stock having voting power registered in his name on the books of the Corporation, except as otherwise provided in the Certificate of Incorporation.

Section 2.10 Proxies.

(a) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(b) A stockholder may issue a valid proxy by (i) executing a written authorization therefor identifying the person or persons authorized to act for such stockholder by proxy or (ii) transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission, provided that the telegram, cablegram or other means of electronic transmission either sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. An "electronic transmission" as used in these Bylaws means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. A copy, facsimile transmission or other reliable reproduction of a written or electronically-transmitted proxy authorized by this Section 2.10 may be substituted for or used in lieu of the original writing or electronic transmission. Each proxy shall be delivered to the inspectors of election prior to or at the meeting. The authorization of a person to act as proxy may be documented, signed and delivered in accordance with Section 116 of the General Corporation Law of the State of Delaware, provided that such authorization shall set forth or be delivered with information enabling the Corporation to determine the identity of the stockholder granting such authorization. A proxy shall be irrevocable if it states that it is irrevocable and if, and only so long

as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

(c) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

Section 2.11 Inspectors. Before any meeting of stockholders, either the Board of Directors or, in the absence of designation of inspectors by the Board of Directors, the chair of any meeting of the stockholders may, in its or such person's discretion, appoint one (1) or more inspectors to act at the meeting or its adjournment and make a written report thereof. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Such inspectors shall perform such duties as shall be specified by the Board of Directors or the chair of the meeting, and may appoint such persons to assist them in performing their duties as they determine. Inspectors need not be Stockholders, employees, officers or directors of the Corporation. No director or nominee for the office of director shall be appointed as any such inspector. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the chair of the meeting shall appoint a person to fill that vacancy. Any report or certificate made by an inspector is prima facie evidence of the facts stated therein.

Section 2.12 Meetings by Remote Communication. If authorized by the Board of Directors, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.13 Proxy Access for Director Nominations.

(a) The Corporation shall include in its proxy statement and/or on its form of proxy or ballot (collectively, "proxy materials") for an annual meeting of stockholders the name of, and the Required Information (as defined below) relating to, any nominee for election or reelection to the Board who satisfies the eligibility requirements in this Section 2.13 (a "Stockholder Nominee") and who is identified in a Stockholder Notice that complies with Section 2.2(b)(2) and that in addition complies with Section 2.13(f) and that is timely delivered

pursuant to Section 2.13(g) by a stockholder on behalf of one or more beneficial owners (such stockholder or beneficial owner, a "Holder"), but in no case more than twenty (20) Holders, who:

(1) elect(s) at the time of delivering the Stockholder Notice to have such Stockholder Nominee included in the Corporation's proxy materials,

(2) as of both the date of the Stockholder Notice, and the record date for determining stockholders entitled to vote at the annual meeting of stockholders, (A) own(s) (as defined below in Section 2.13(c)) a number of shares that represents at least 3% of the outstanding shares of the Corporation entitled to vote in the election of directors as of the most recent date for which such amount is disclosed in any filing by the Corporation with the SEC prior to the submission of the Stockholder Notice (the "Required Shares") and (B) has or have owned (as defined below in Section 2.13(c)) continuously the Required Shares (as adjusted for any stock splits, stock dividends, or similar events) for at least the three (3)-year period preceding the date of the Stockholder Notice, and must continue to hold the Required Shares through the annual meeting date, and

(3) satisfies or satisfy the additional requirements in these Bylaws (such Holder or Holders collectively, an "Eligible Stockholder"). For the avoidance of doubt, in the event of a nomination by a group of Holders, any and all requirements and obligations for an individual Eligible Stockholder set forth in this Section 2.13, including the minimum holding period, shall apply to each member of such group, provided that the Required Shares shall be owned by the group of Holders in the aggregate. Should any Holder withdraw from a group of Holders constituting an Eligible Stockholder at any time prior to the annual meeting of stockholders, the remaining Holders shall be deemed to own only the shares owned by the remaining members of the group in determining if the Holders continue to constitute an Eligible Stockholder.

(b) For purposes of satisfying the ownership requirement under Section 2.13(a):

(1) the outstanding shares of the Corporation owned by one or more Holders may be aggregated, provided that the number of Holders whose ownership of shares is aggregated for such purpose shall not exceed twenty (20), and

(2) a group of funds under common management and investment control shall be treated as one Holder.

(c) For purposes of this Section 2.13, an Eligible Stockholder "owns" only those outstanding shares of the Corporation as to which the Holder possesses both;

(1) the full voting and investment rights pertaining to the shares and

(2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares:

(i) sold by such Holder or any of its affiliates in any transaction that has not been settled or closed,

(ii) borrowed by such Holder or any of its affiliates for any purposes or purchased by such Holder or any of its affiliates pursuant to an agreement to resell, or

(iii) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of:

(A) reducing in any manner, to any extent or at any time in the future, such Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or

(B) hedging, offsetting, or altering to any degree gain or loss arising from the full economic ownership of such shares by such Holder or affiliate.

A Holder "owns" shares held in the name of a nominee or other intermediary so long as the Holder 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 Holder's ownership of shares shall be deemed to continue during any period in which the Holder has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the Holder. A Holder's ownership of shares shall be deemed to continue during any period in which the Holder has loaned such shares provided that the Holder has the power to recall such loaned shares on no more than five (5) business days' notice and recalls such loaned shares back to its own possession not more than five (5) business days after being notified that its Stockholder Nominee will be included in the Corporation's proxy material for the relevant annual meeting and holds the recalled shares through date of the annual meeting. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board. For purposes of this Section 2.13, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the 1934 Act.

(d) No Holder may be a member of more than one group of Holders constituting an Eligible Stockholder under this Section 2.13 per each annual meeting of stockholders.

(e) For purposes of this Section 2.13, the "Required Information" that the Corporation will include in its proxy materials is:

(1) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy materials by the applicable requirements of the 1934 Act and the rules and regulations thereunder; and

(2) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder, not to exceed 500 words, in support of its Stockholder Nominee, which must

be provided at the same time as the Stockholder Notice for inclusion in the Corporation's proxy materials for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation may omit from its proxy materials any information, including all or a portion of any Statement, if the Corporation in good faith believes such information (A) is not true and correct in all material respects or omits to state a material statement necessary to make the statements therein not misleading; (B) directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (C) would violate any applicable law or regulation. Nothing in this Section 2.13 shall limit the Corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(f) The Stockholder Notice shall set forth the information required under Section 2.2(b) (2) of these Bylaws and in addition shall set forth:

(1) a copy of the Schedule 14N that has been or concurrently is filed with the Securities and Exchange Commission under Rule 14a-18 under the 1934 Act;

(2) the details of any relationship not disclosed in the Schedule 14N that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(3) an executed written agreement by the Eligible Stockholder addressed to the Corporation, setting forth the following additional agreements, representations, and warranties:

(i) a representation and warranty as to the number of shares of the Corporation it owns and has owned (as defined in Section 2.13(c)) continuously for at least three years as of the date of the Stockholder Notice and an agreement to continue to own the Required Shares through the date of the annual meeting, which statement shall also be included in the written statements set forth in Item 4 of the Schedule 14N filed by the Eligible Stockholder with the Securities and Exchange Commission, and a representation and warranty that it intends to continue to satisfy the eligibility requirements described in this Section 2.13 through the date of the annual meeting;

(ii) the Eligible Stockholder's agreement to provide written statements from the record holder and intermediaries as required under Section 2.13(h) verifying the Eligible Stockholder's continuous ownership of the Required Shares, such statements to be delivered within five (5) business days after the date of the Stockholder Notice and as of the business day immediately preceding the date of the annual meeting;

(iii) the Eligible Stockholder's representation and agreement that the Eligible Stockholder (including each member of any group of Holders that together is an Eligible Stockholder under this Section 2.13):

(A) did not acquire the Required Shares with the intent to change or influence control at the Corporation, and does not presently have such intent,

(B) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 2.13,

(C) has not engaged and will not engage in a, and has not been and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the 1934 Act (or any successor rules), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board, and

(D) will not distribute to any Stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation; and

(iv) the Eligible Stockholder's agreement to:

(A) assume all liability stemming from any legal or regulatory violation arising out of any statements or communications made by the Eligible Stockholder to the Corporation, its stockholders or any other persons in connection with the nomination or election of directors, including, without limitation, the Stockholder Notice,

(B) indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees, individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of the Eligible Stockholder's actions, including the provision of any information in the Stockholder Notice or any other communication by the Eligible Stockholder (including with respect to any group member) with the Corporation, in connection with any nomination submitted by the Eligible Stockholder pursuant to this Section 2.13,

(C) in the event that any information in the Stockholder Notice, or any other communication by the Eligible Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and correct in all material respects or omits to state a material fact necessary to make the statements made therein not misleading, or the Eligible Stockholder (including any group member) discovers that it has failed to continue to satisfy the eligibility requirements described in this Section 2.13, promptly (and in any event within 48 hours of discovering such misstatement, omission or failure to satisfy eligibility) notify the Corporation and any other recipient of such misstatement or omission and of the information required to correct the misstatement or omission, or of such failure to satisfy eligibility;

(D) comply with all other laws and regulations applicable to the Eligible Stockholder in connection with any solicitation in connection with the annual meeting,

(E) file all materials described below in Section 2.13(h)(3) with the Securities and Exchange Commission, regardless of whether any such filing is required under Regulation 14A under the 1934 Act or whether any exemption from filing is available for such materials under Regulation 14A, and

(F) provide to the Corporation prior to the annual meeting such additional information as may be reasonably requested by the Corporation in order for the Corporation to comply with its disclosure obligations under applicable law, determine the Eligible Stockholder's satisfaction of the requirements of this Section 2.13 and ascertain the Stockholder Nominee's eligibility for nomination pursuant to this Section 2.13; and

(4) in the case of a nomination by a group of Holders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including any withdrawal of the nomination.

The information and documents required by this Section 2.13(f) shall be: (i) provided with respect to and executed by each Holder whose shares are aggregated for purposes of constituting an Eligible Stockholder, in the case of a group; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Stockholder Nominee or group member that is an entity. The Stockholder Notice shall be deemed submitted on the date on which all of the information and documents referred to in this Section 2.13(f) (other than such information and documents contemplated to be provided after the date the Stockholder Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(g) To be timely under this Section 2.13, the Stockholder Notice must be received by the secretary of the Corporation not later than the close of business on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the date the definitive proxy statement was first released to Stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is scheduled more than thirty (30) days prior to or more than sixty (60) days following the anniversary of the preceding year's annual meeting, the Stockholder Notice, to be timely, must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting, or the announcement thereof, commence a new time period for the giving of the Stockholder Notice as described above.

(h) An Eligible Stockholder (or in the case of a group, each Holder whose shares are aggregated for purposes of constituting an Eligible Stockholder) must:

(1) within five (5) business days after the date of the Stockholder Notice, and on the last business day immediately prior to the date of the annual meeting, provide one (1) or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the

requisite three-year holding period, verifying that the Eligible Stockholder owns, and has owned continuously for the preceding three (3) years, the Required Shares,

(2) include in the written statements provided pursuant to Item 4 of Schedule 14N filed with the Securities and Exchange Commission a statement certifying that it owns and continuously has owned, as defined in Section 2.13(c), the Required Shares for at least three (3) years,

(3) file with the Securities and Exchange Commission any solicitation or other communication relating to the annual meeting at which any Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A under the 1934 Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A, and

(4) as to any group of funds whose shares are aggregated for purposes of constituting an Eligible Stockholder, within five (5) business days after the date of the Stockholder Notice, provide documentation reasonably satisfactory to the Corporation that demonstrates that the funds are under common management and investment control.

(i) Within the time period specified in Section 2.13(g) for delivery of the Stockholder Notice, a Stockholder Nominee must deliver to the Secretary of the Corporation the questionnaire, representation and agreement set forth in Section 2.2(f). At the request of the Corporation, the Stockholder Nominee must promptly, but in any event within five (5) business days of such request, submit any additional completed and signed questionnaires required of the Corporation's directors and provide to the Corporation such other information as it may reasonably request in order for the Corporation to comply with its disclosure obligations under applicable law, determine the Eligible Stockholder's satisfaction of the requirements of this Section 2.13 or ascertain the Stockholder Nominee's eligibility for nomination pursuant to this Section 2.13. The Corporation may request such additional information as necessary to permit the Board to determine if each Stockholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the shares of the Corporation are listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board in determining and disclosing the independence of the Corporation's directors.

(j) Notwithstanding anything to the contrary contained in this Section 2.13, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, and a stockholder may not, after the last day on which a Stockholder Notice would be timely, cure in any way any defect preventing the nomination of the Stockholder Nominee, if:

(1) the Secretary of the Corporation receives notice pursuant to Section 2.2(b) of these Bylaws that a stockholder intends to nominate a person for election to the Board, which stockholder does not elect to have its nominee(s) included in the Corporation's proxy materials pursuant to this Section 2.13,

(2) (A) the Eligible Stockholder materially breaches any of its agreements set forth in the Stockholder Notice, (B) the Board of Directors, acting in good faith, determines that the Eligible Stockholder has provided representations and warranties or other information to the Company in connection with such nomination (including without limitation in the Stockholder Notice) that was untrue, or ceases to be true, in any material respect or omitted, or omits, to state a material fact necessary to make the statements made therein not misleading, or (C) the Stockholder Nominee withdraws his or her consent or becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Stockholder Nominee provided for herein,

(3) the Eligible Stockholder withdraws its nomination,

(4) the Board of Directors, acting in good faith, after consultation with outside counsel, determines that such Stockholder Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule, regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's securities are traded, or

(5) the Stockholder Nominee (A) is not independent under the listing standards of the principal U.S. exchange upon which the shares of the Corporation are listed, any applicable rules of the Securities and Exchange Commission, and any publicly disclosed standards used by the Board in determining and disclosing the independence of the Corporation's directors, (B) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the Corporation are listed, or as a "non-employee director" under Rule 16b-3 under the 1934 Act (or any successor provision), (C) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (D) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten years, or (E) is or has been subject to any order, judgement, decree, event or circumstance specified in Rule 506(d)(1) under the Securities Act of 1933, as amended (or successor Rule), such that the exemption under Rule 506 (or successor Rule) would be unavailable to the Corporation were the Stockholder Nominee a member of the Board.

(k) Notwithstanding anything to the contrary contained in this Section 2.13, the Board may declare a nomination to be invalid (and shall do so in the case of paragraphs 2.13(k)(2) and (3) below), and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(1) the Board of Directors, acting in good faith, determines that the Eligible Stockholder has failed to continue to satisfy the eligibility requirements described in this Section 2.13;

(2) the Eligible Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 2.13, or

(3) the Eligible Stockholder withdraws its nomination.

(l) The number of Stockholder Nominees appearing in the Corporation's proxy materials with respect to an annual meeting of stockholders (including any Stockholder Nominee whose name was submitted for inclusion in the Corporation's proxy materials but who is nominated by the Board as a Board nominee), together with any nominees who were previously elected to the Board as Stockholder Nominees at any of the preceding two (2) annual meetings and who are re-nominated for election at such annual meeting by the Board and any Stockholder Nominee who was qualified for inclusion in the Corporation's proxy materials but whose nomination is subsequently withdrawn, shall not exceed (the "Maximum Number") the greater of (i) two (2) or (ii) 20% of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 2.13 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number below 20%. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.13 exceeds this Maximum Number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Maximum Number is reached, going in order of the number (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as owned in its respective Stockholder Notice submitted to the Corporation. If the Maximum Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached. In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in Section 2.13(g) but before the date of the annual meeting, and the Board resolves to reduce its size in connection therewith, the Maximum Number shall be calculated based on the number of directors as so reduced.

(m) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of Stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting, or (ii) does not receive at least 25% of the votes cast in favor of the Stockholder Nominee's election, will be ineligible to be a Stockholder Nominee pursuant to this Section 2.13 for the next two annual meetings.

(n) This Section 2.13 provides the exclusive method for a stockholder to include nominees for election to the Board in the Corporation's pruxy materials.

(o) The interpretation of, and compliance with, any provision of this Section 2.13, including the representations, warranties and covenants contained herein, shall be determined by the Board or, in the discretion of the Board, one or more of its designees, in each case acting reasonably and in good faith.

ARTICLE III
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 which may exercise all such powers of the Corporation and do all such acts and things as are not, by the General Corporation Law of the State of Delaware nor by the Certificate of Incorporation nor by these Bylaws, directed or required to be exercised or done by the stockholders.

Section 3.2 Number and Qualifications of Directors.

(a) The number of directors which shall constitute the whole Board of Directors shall be no less than seven and no more than eleven; provided that until changed by resolution of the Board of Directors, the number of directors shall be fixed at eleven. Except as otherwise required by applicable law, the Certificate of Incorporation or Section 3.3 of this Article III, a nominee for director shall be elected by the affirmative vote of a majority of the votes cast with respect to such director, provided that nominees for director shall be elected by the vote of a plurality of the votes cast at any meeting of stockholders for which, as of a date that is ten (10) days in advance of the date on which the Corporation files its definitive proxy statement with the Securities and Exchange Commission (regardless of whether thereafter revised or supplemented), the number of nominees for director exceeds the number of directors to be elected, as determined by the Secretary of the Corporation. For purposes of this Section 3.2, a majority of the votes cast means that the number of shares voted "for" a director exceeds the number of votes cast "against" that director. The following shall not be votes cast: (a) a share whose ballot is marked as withheld; (b) a share otherwise present at the meeting but for which there is an abstention; and (c) a share otherwise present at the meeting as to which a shareholder gives no authority or direction.

(b) If an incumbent director is not elected due to a failure to receive a majority of the votes cast as described above, and his or her successor is not otherwise elected and qualified, such director shall tender his or her offer to resign to the Secretary of the Corporation promptly following the certification of the election results. Within ninety (90) days after the date of the certification of the election results, (i) the Corporate Governance and Nominating Committee will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken and (ii) the Board of Directors will act on such committee's recommendation and publicly disclose its decision and the rationale behind it, provided that any director who tenders his or her offer to resign shall not participate in either the Corporate Governance and Nominating Committee's or Board of Directors' deliberations regarding the offer to resign, and if a quorum of the Corporate Governance and Nominating Committee cannot be met without the presence of the directors who did not receive a majority of the votes cast, then the Board of Directors shall appoint a committee of independent directors to consider the resignation offers and recommend to the Board of Directors whether to accept or reject the resignations, or whether other action should be taken. Directors need not be stockholders.

Section 3.3 Term; Vacancies; Resignation and Removal of Directors.

(a) In accordance with the Certificate of Incorporation, the directors shall be elected at each annual meeting of stockholders, and each director elected shall hold office until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal.

(b) Unless otherwise provided in the Certificate of Incorporation or these Bylaws, vacancies resulting from the death, resignation, disqualification or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors, shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(c) Any director of the Corporation may at any time resign by giving notice in writing or by electronic transmission to the Board of Directors, the Chair of the Board, the President or the Secretary of the Corporation. Such resignation shall take effect upon receipt thereof by the Corporation, or such later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in Section 3.2(a).

Section 3.4 Place of Meetings. The Board of Directors may hold its meetings inside or outside of the State of Delaware, at the office of the Corporation or at such other places as they may from time to time determine, or as shall be fixed in the respective notices or waivers of notice of such meetings.

Section 3.5 Compensation of Directors. Directors who are not at the time also a salaried officer or employee of the Corporation or any of its subsidiaries may receive such stated salary for their services and/or such fixed sums and expenses of attendance for attendance at each regular or special meeting of the Board of Directors as may be established by resolution of the Board; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings. Each director, whether or not a salaried officer or employee of the Corporation or any of its subsidiaries, shall be entitled to receive from the Corporation reimbursement for the reasonable expenses incurred by such person in connection with the performance of such person's duties as a director.

Section 3.6 Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as the Board shall from time to time by resolution determine.

Section 3.7 Special Meetings. Special meetings of the Board of Directors may be held at any time on the call of the President or the Chair of the Board, or at the request in writing of a majority of the directors. Notice of any such meeting, unless waived, shall be given to directors personally, by telephone, by first-class United States mail, postage prepaid, or by facsimile or electronic transmission to each director at his or her address as the same appears on the records of the Corporation not later than two days prior to the day on which such meeting is to be held if such notice is delivered personally, by telephone or by facsimile or electronic transmission, or not less than four days prior to the day on which the meeting is to be held if such notice is by first-class United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the President or any one of the directors calling the meeting. Any such meeting may be held at such place as the Board may fix from time to time or as may be specified or fixed in such notice or waiver thereof. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting. Any meeting of the Board of Directors shall be a legal meeting without any notice thereof having been given, if all the directors shall waive notice or be present thereat, and no notice of a meeting shall be required to be given to any director who shall attend such meeting without protesting, prior to

or at its commencement, the lack of such notice to such member. Notice of any adjourned meeting of the Board of Directors need not be given to any director in attendance.

Section 3.8 Action Without Meeting; Use of Communications Equipment.

(a) Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or of such committee, as the case may be, consent to such action in writing or by electronic transmission and such written consent or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or the committee thereof, in the same paper or electronic form as the minutes are maintained.

(b) Members of the Board of Directors, or any committee designated by the Board, may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

Section 3.9 Quorum and Manner of Acting.

(a) Except as otherwise provided in these Bylaws, a majority of the total number of directors shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Directors. Except as otherwise provided by statute, by the Certificate of Incorporation or by these Bylaws, the vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present.

(b) The Board of Directors may adopt such rules and regulations not inconsistent with the provisions of these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board may deem to be proper. In the absence of the Chair of the Board, such person designated by the Board shall preside at Board meetings.

ARTICLE IV
EXECUTIVE AND OTHER COMMITTEES

Section 4.1 Executive Committee. The Board of Directors may, by resolution adopted by a majority of the entire Board of Directors, designate annually three (3) or more of the directors to constitute members or alternate members of an Executive Committee, which Executive Committee shall have and may exercise, between the meetings of the Board of Directors, all of the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, including, without limitation, if such Executive Committee is so empowered and authorized by resolution adopted by a majority of the entire Board of Directors, the power and authority to declare a dividend and to authorize the issuance of stock, and may authorize the seal of the Corporation to be affixed to all papers which may require it, except that such Executive Committee shall not have such power or authority in reference to:

(a) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval, or (b) adopting, amending or repealing any bylaw of the Corporation.

The Board of Directors shall have the power at any time to change the membership of the Executive Committee, to fill all vacancies in it and to discharge it, either with or without cause.

Section 4.2 Other Committees. The Board of Directors may, by resolution adopted by a majority of the entire Board of Directors (except to the extent prohibited by law), designate from among the directors one or more other committees, each of which shall have such authority of the Board of Directors as may be specified in the resolution of the Board of Directors designating such committee; provided that no committee shall have the power or authority in reference to the matters described in Section 4.1(a) and (b) above. A majority of all of the members of such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have the power at any time to change the membership of, to fill all vacancies in and to discharge any such committee, either with or without cause. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required. Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Section 4.3 Procedure; Meeting; Quorum. Regular meetings of the Executive Committee or of any other committee of the Board of Directors, of which no notice shall be necessary, may be held at such times and places as shall be fixed by resolution adopted by a majority of the members thereof or by the Board of Directors. Special meetings of the Executive Committee or any other committee of the Board of Directors shall be called at the request of any member thereof. Notice of each special meeting of the Executive Committee or of any other committee of the Board of Directors shall be delivered personally, by telephone, by first-class United States mail, postage prepaid or by facsimile or electronic transmission to each member thereof not later than twenty-four (24) hours prior to the time at which such meeting is to be held if such notice is delivered personally, by telephone or by facsimile or electronic transmission and not less than four days prior to the day on which such meeting is to be held if such notice is delivered by first-class United States mail; provided, however, that notice of any such special meeting need not be given to any such member who shall, either before or after such special meeting, submit a signed waiver of such notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of such notice to such member. Any special meeting of the Executive Committee or any other committee of the Board of Directors shall be a valid meeting without any notice thereof having been given if all of the members thereof shall waive notice or be present thereat without protesting, prior to or at its commencement, the lack of such notice to such member. Notice of any adjourned meeting of any committee of the Board of Directors need not be given to any director in attendance. Each of the Executive Committee and each other committee of the Board of Directors may adopt such rules and regulations that are not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as the Executive Committee or each other committee of the Board of Directors, as the case may be, may deem to be proper. A majority of the members of the Executive Committee or of any other committee of the Board of Directors shall constitute a quorum for the

transaction of business at any meeting thereof, and the vote of a majority of the members thereof present at any meeting thereof at which such a quorum is present shall be the act of the Executive Committee or such other committee, as the case may be. Each of the Executive Committee and each other committee of the Board of Directors shall keep written minutes of its proceedings and shall report on such proceedings to the Board of Directors.

ARTICLE V
OFFICERS

Section 5.1 Officers. The officers of the Corporation shall be a President and Chief Executive Officer, a Chief Financial Officer, a Chief Legal Officer, a Treasurer, a Secretary, and such number of executive vice presidents, if any, as the Board of Directors may determine. One person may hold any number of said offices.

Section 5.2 Election, Term of Office and Eligibility. The officers of the Corporation shall be appointed annually by the Board of Directors, and new or additional officers, or officers appointed to fill a vacancy occurring in any office of the Corporation, may be appointed at any time by the Board. Each officer, except such officers as may be appointed in accordance with the provisions of Section 5.3, shall hold office until the next annual election of officers or until his or her death, resignation or removal. None of the other officers need be members of the Board.

Section 5.3 Subordinate Officers. The Board of Directors may appoint a Controller, such vice presidents, assistant secretaries, assistant treasurers and such other officers, and such agents as the Board may determine, to hold office for such period and with such authority and to perform such duties as the Board may from time to time determine. The Board may, by specific resolution, empower the Chief Executive Officer of the Corporation or the Executive Committee to appoint any such subordinate officers or agents.

Section 5.4 Removal and Resignation of Officers. (a) Subject to the rights, if any, of an officer under any contract of employment, (i) any officer appointed pursuant to Section 5.1 may be removed, either with or without cause, only by the vote of a majority of the entire Board of Directors; and (ii) any officer appointed pursuant to Section 5.3 may be removed, either with or without cause, by the vote of a majority of the directors present at any meeting at which a quorum is present or by any committee or officer empowered to appoint such subordinate officer.

(b) Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

(c) Any vacancy occurring in any office of the Corporation shall be filled as provided in Section 5.2 or Section 5.3, as applicable.

Section 5.5 Chair of the Board. The Chair of the Board shall, if present, preside at meetings of the Board of Directors. The Chair of the Board shall be a member of the Board of Directors.

Section 5.6 The President. The President shall be the Chief Executive Officer of the Corporation. He shall have executive authority to see that all orders and resolutions of the Board of Directors are carried into effect and, subject to the control vested in the Board of Directors by statute, by the Certificate of Incorporation, or by these Bylaws, shall administer and be responsible for the management of the business and affairs of the Corporation. He shall in general perform all duties incident to the office of the President and such other duties as from time to time may be assigned to him by the Board of Directors.

Section 5.7 Other Executive Officers and Executive Vice Presidents. In the event of the absence or disability of the President, the other executive officers of the Corporation, in the order designated, or in the absence of any designation, then in the order of their election, shall perform the duties of the President. The other officers and executive vice presidents of the Corporation shall also perform such other duties as may be provided herein or as from time to time may be assigned to them by the Board of Directors or by the President of the Corporation, and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

Section 5.8 The Secretary. The Secretary shall:

(a) Keep the minutes of the meetings of the stockholders and of the Board of Directors;

(b) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) Be custodian of the records and of the seal of the Corporation and see that the seal or a facsimile or equivalent thereof is affixed to or reproduced on all documents, the execution of which on behalf of the Corporation under its seal is duly authorized;

(d) Have charge of the stock record books of the Corporation;

(e) In general, perform all duties incident to the office of Secretary, and such other duties as are provided by these Bylaws and as from time to time are assigned to him by the Board of Directors or by the Chief Executive Officer of the Corporation.

Section 5.9 The Treasurer. The Treasurer shall:

(a) Receive and be responsible for all funds of and securities owned or held by the Corporation and, in connection therewith, among other things: keep or cause to be kept full and accurate records and accounts for the Corporation; deposit or cause to be deposited to the credit of the Corporation all moneys, funds and securities so received in such bank or other depositary as the Board of Directors or an officer designated by the Board may from time to time establish; and disburse or supervise the disbursement of the funds of the Corporation as may be properly authorized.

(b) Render to the Board of Directors at any meeting thereof, or from time to time whenever the Board of Directors or the Chief Executive Officer of the Corporation may require, financial and other appropriate reports on the condition of the Corporation;

(c) In general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors or by the Chief Executive Officer of the Corporation.

Section 5.10 Compensation. The compensation of the officers shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a director of the Corporation.

Section 5.11 Delegation of Duties. In case of the absence of any officer of the Corporation or for any other reason which may seem sufficient to the Board of Directors, the Board of Directors may, for the time being, delegate his powers and duties, or any of them, to any other officer or to any director.

ARTICLE VI
SHARES OF STOCK

Section 6.1 Regulation. Subject to the terms of any contract of the Corporation, the Board of Directors may make such rules and regulations as it may deem expedient concerning the issue, transfer, and registration of certificates for shares of the stock of the Corporation, including the issue of new certificates for lost, stolen or destroyed certificates, and including the appointment of transfer agents and registrars.

Section 6.2 Stock Certificates. The shares of the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series of its stock shall be uncertificated shares; provided, however, that no such resolution shall apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock of the Corporation represented by certificates, and, upon written request to the Corporation's transfer agent or registrar, any holder of uncertificated shares, shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, certifying the number and class of shares owned by him in the Corporation. Certificates for shares of the stock of the Corporation shall be respectively numbered serially for each class of stock, or series thereof, as they are issued, shall be impressed with the corporate seal or a facsimile thereof, and shall be signed by the President or other executive officer, and by the Secretary or Treasurer, or an Assistant Secretary or an Assistant Treasurer, provided that such signatures may be facsimiles on any certificate countersigned by a transfer agent other than the Corporation or its employee. Each certificate shall exhibit the name of the Corporation, the class (or series of any class) and number of shares represented thereby, and the name of the holder. Each certificate shall be otherwise in such form as may be prescribed by the Board of Directors.

Section 6.3 Restriction on Transfer of Securities. A restriction on the transfer or registration of transfer of securities of the Corporation may be imposed either by the Certificate of Incorporation or by these Bylaws or by an agreement among any number of security holders or among such holders and the Corporation. No restriction so imposed shall be binding with respect to securities issued prior to the adoption of the restriction unless the holders of the securities are parties to an agreement or voted in favor of the restriction.

A restriction on the transfer of securities of the Corporation is permitted by this Section if it:

(a) Obligates the holder of the restricted securities to offer to the Corporation or to any other holders of securities of the Corporation or to any other person or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted securities; or

(b) Obligates the Corporation or any holder of securities of the Corporation or any other person or any combination of the foregoing to purchase the securities which are the subject of an agreement respecting the purchase and sale of the restricted securities; or

(c) Requires the Corporation or the holders of any class of securities of the Corporation to consent to any proposed transfer of the restricted securities or to approve the proposed transferee of the restricted securities; or

(d) Prohibits the transfer of the restricted securities to designated persons or classes of persons; and such designation is not manifestly unreasonable; or

(e) Restricts transfer or registration of transfer in any other lawful manner.

Unless noted conspicuously on the security, a restriction, even though permitted by this Section, is ineffective except against a person with actual knowledge of the restriction.

Section 6.4 Transfer of Shares. Except as otherwise established by rules and regulations adopted by the Board of Directors, and subject to applicable law, shares of stock may be transferred on the books of the Corporation: (i) in the case of shares represented by a certificate, by the surrender to the Corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or authenticity of signature as the Corporation or its transfer agent may reasonably require; and (ii) in the case of uncertificated shares, upon the receipt of proper transfer instructions from the registered owner thereof. Except as may be otherwise required by law, the Certificate of Incorporation or the Bylaws, the Corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

Section 6.5 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next

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

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.6 Lost Certificate. Except as provided in this Section 6.6, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. Any stockholder claiming that a certificate representing shares of stock has been lost, stolen or destroyed may make an affidavit or affirmation of the fact and, if the Board of Directors so requires, advertise the same in a manner designated by the Board, and give the Corporation a bond of indemnity in form and with security for an amount satisfactory to the Board (or an officer or officers designated by the Board), whereupon a new certificate may be issued of the same tenor and representing the same number, class and/or series of shares as were represented by the certificate alleged to have been lost, stolen or destroyed.

ARTICLE VII
BOOKS AND RECORDS

Section 7.1 Location. The books, accounts and records of the Corporation may be kept at such place or places within or outside the State of Delaware as the Board of Directors may from time to time determine. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the General Corporation Law of the State of Delaware, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the General Corporation Law of the State of Delaware, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as adopted in the State of Delaware.

Section 7.2 Inspection. The books, accounts, and records of the Corporation shall be open to inspection by any member of the Board of Directors at all times; and open to inspection by the stockholders at such times, and subject to such regulations as the Board of Directors may prescribe, except as otherwise provided by statute.

Section 7.3 Corporate Seal. The corporate seal shall contain two concentric circles between which shall be the name of the Corporation and the word "Delaware" and in the center shall be inscribed the words "Corporate Seal."

Section 7.4 Stock Ledger. A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with Section 224 of the General Corporation Law of the State of Delaware shall be administered by or on behalf of the Corporation.

ARTICLE VIII
DIVIDENDS AND RESERVES

Section 8.1 Dividends. The Board of Directors of the Corporation, subject to any restrictions contained in the Certificate of Incorporation and other lawful commitments of the Corporation, may declare and pay dividends upon the shares of its capital stock either out of the surplus of the Corporation, as defined in and computed in accordance with the General Corporation Law of the State of Delaware, or in case there shall be no such surplus, out of the net profits of the Corporation for the fiscal year in which the dividend is declared and/or the preceding fiscal year. If the capital of the Corporation, computed in accordance with the General Corporation Law of the State of Delaware, shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets, the Board of Directors of the Corporation shall not declare and pay out of such net profits any dividends upon any shares of any classes of its capital stock until the deficiency in the amount of capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets shall have been repaired.

Section 8.2 Reserves. The Board of Directors of the Corporation may set apart, out of any of the funds of the Corporation available for dividends, a reserve or reserves for any proper purpose and may abolish any such reserve.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall end on the 31st day of December of each year.

Section 9.2 Depositories. The Board of Directors or an officer designated by the Board shall appoint banks, trust companies, or other depositories in which shall be deposited from time to time the money or securities of the Corporation.

Section 9.3 Checks, Drafts and Notes. All checks, drafts, or other orders for the payment of money and all notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or agent or agents as shall from time to time be designated by resolution of the Board of Directors or by an officer appointed by the Board.

Section 9.4 Contracts and Other Instruments. The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation and such authority may be general or confined to speeific instances.

Section 9.5 Notices. In addition to other means of notice permitted herein, whenever under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, or by delivery to a telegraph company, addressed to such director or stockholder at such address as appears on the records of the Corporation, or, in default of other address, to such director or stockholder at the General Post Office in the City of Dover, Delaware, and such notice shall be deemed to be given at the time when the same shall be thus mailed or delivered to a telegraph company.

Section 9.6 Waivers of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice.

Section 9.7 Stock in Other Corporations. Any shares of stock in any other Corporation which may from time to time be held by this Corporation may be represented and voted at any meeting of shareholders of such Corporation by the President or other executive officer, or by any other person or persons thereunto authorized by the Board of Directors, or by any proxy designated by written instrument of appointment executed in the name of this Corporation by its President or an executive officer. Shares of stock belonging to the Corporation need not stand in the name of the Corporation, but may be held for the benefit of the Corporation in the individual name of the Treasurer or of any other nominee designated for the purpose by the Board of Directors. Certificates for shares so held for the benefit of the Corporation shall be endorsed in blank or have proper stock powers attached so that said certificates are at all times in due form for transfer, and shall be held for safekeeping in such manner as shall be determined from time to time by the Board of Directors.

Section 9.8 Indemnification.

(a) The Corporation shall indemnify any person (a "covered person") who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or an officer of the Corporation, against all judgments, fines, amounts paid in settlement and other liability and loss suffered, and all expenses (including, without limitation, attorneys' fees) reasonably incurred

thereby in connection with such action, suit or proceeding to the fullest extent permitted by the General Corporation Law of the State of Delaware and any other applicable law as from time to time in effect. Such right of indemnification shall include the right to payment of expenses incurred in defending any proceeding in advance of final disposition of such proceeding upon tendering of any undertaking by the person to whom advances are made to repay such expenses required by law as a condition to advancement of such expenses, and shall not be deemed to be exclusive of any rights to which any such director or officer may otherwise be entitled. The foregoing provisions of this Section 9.8(a) shall be deemed to be a contract between the Corporation and each director and officer of the Corporation serving in such capacity, in consideration of such person's performance of such services, and any repeal or modification thereof shall not affect any right or obligation then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts. With respect to current and former directors and officers of the Corporation, the rights conferred under this Section are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these Bylaws. With respect to any directors or officers of the Corporation who commence service following adoption of these Bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the Corporation. Notwithstanding the first sentence of this Section 9.8(a), except as otherwise provided in Section 9.8(c), the Corporation shall be required to indemnify a covered person in connection with a proceeding (or part thereof) commenced by such covered person only if the commencement of such proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to, or is otherwise involved in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was an 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 all judgments, fines, amounts paid in settlement and other liability and loss suffered, and all expenses (including, without limitation, attorneys' fees) reasonably incurred thereby in connection with such action, suit or proceeding to the extent permitted by and in the manner set forth in and permitted by the General Corporation Law of the State of Delaware and any other applicable law as from time to time in effect. Such right of indemnification may include the right to payment of expenses incurred in defending any proceeding in advance of final disposition of such proceeding upon tendering of any undertaking to repay such expenses required by the board of directors as a condition to advancement of such expenses, and shall not be deemed to be exclusive of any other rights to which any such person may otherwise be entitled. Notwithstanding the first sentence of this Section 9.8(b), except as otherwise provided in Section 9.8(c), the Corporation shall be required to indemnify a person in connection with a proceeding (or part thereof) commenced by such person only if the commencement of such proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors.

(c) If a claim under subsection (a) or (b) of this Section is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the

claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to be paid the expense of prosecuting such claim. It shall be a defense to any action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has failed to meet a standard of conduct which makes it permissible under Delaware law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is permissible in the circumstances because he has met such standard of conduct, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such standard of conduct, nor the termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall be a defense to the action or create a presumption that the claimant has failed to meet the required standard of conduct.

(d) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(e) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another Corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(f) To the extent that any director, officer, employee or agent of the Corporation is by reason of such position, or a position with another entity at the request of the Corporation, a witness in any proceeding, he shall be indemnified against all costs and expenses actually and reasonably incurred by him or on his behalf in connection therewith.

(g) The rights to indemnification and to prepayment of expenses provided by, or granted pursuant to, this Section shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(h) Any amendment, repeal or modification of any provision of this Section by the stockholders or the directors of the Corporation shall not adversely affect any right or protection (i) hereunder of any person with respect to any action or omission occurring prior to the time of such amendment, repeal or modification or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the Corporation in effect prior to the time of such repeal or modification.

Section 9.9 Amendment of Bylaws.

(a) The stockholders, by the affirmative vote of the holders of a majority of the stock issued and outstanding and having voting power may, at any annual or special meeting if notice of such alteration or amendment of the Bylaws is contained in the notice of such meeting, adopt, amend, or repeal these Bylaws, and alterations or amendments of Bylaws made by the stockholders shall not be altered or amended by the Board of Directors.

(b) The Board of Directors, by the affirmative vote of a majority of the directors present at any meeting at which a quorum is present, may adopt, amend, or repeal these Bylaws at any meeting, except as provided in the above paragraph. Bylaws made by the Board of Directors may be altered or repealed by the stockholders.

ARTICLE X
EXCLUSIVE FORUM

Section 10.1 Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, or other employee of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim against the Corporation or any director, officer, or other employee of the Corporation arising pursuant to any provision of the General Corporation Law of the State of Delaware, or the Corporation's Certificate of Incorporation or Bylaws (as either may be amended from time to time) or (4) any action asserting a claim against the Corporation, or any director, officer, or other employee of the Corporation governed by the internal affairs doctrine; and (b) the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause or causes of action arising under the Securities Act of 1933, as amended, including all causes of action asserted against any defendant to such complaint.

If any action, the subject matter of which is within the scope of clause (a) of the immediately preceding sentence, is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of the immediately preceding sentence and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article X. This provision is intended to benefit and may be enforced by the Corporation, its officers and directors, the underwriters to any offering giving rise to such complaint, and any other professional or entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering.

Exhibit E

Certificate of Amendment to the Certificate of Incorporation

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MOLINA HEALTHCARE, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF MAY, A.D. 2019, AT 6:25 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

3551135 8100
SR# 20234315728

Authentication: 204893181
Date: 12-22-23

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:25 PM 05/09/2019
FILED 06:25 PM 05/09/2019
SR 20193729983 - File Number 3551135

CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF INCORPORATION OF MOLINA HEALTHCARE, INC.

Pursuant to §242 of the General Corporation Law of the State of Delaware

The undersigned, for purposes of amending the Certificate of Incorporation, as amended (the "Certificate") of Molina Healthcare, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: The name of the corporation is Molina Healthcare, Inc. (the "Corporation").

SECOND: Article V, Paragraph B of the Certificate is hereby amended to read in its entirety, as follows:

B. Subject to the special rights of the holders of any class or series of stock to elect directors:

1. Until the election of directors at the Corporation's annual meeting of stockholders in 2022, pursuant to Section 141(d) of the Delaware Corporation Law, the Board of Directors shall be divided into three classes of directors, Class I, Class II, and Class III (each class as nearly equal in number as possible). Each director elected at or prior to the Corporation's annual meeting of stockholders in 2019 shall be elected for a term expiring on the date of the third annual meeting of stockholders following the annual meeting at which the director was elected. Each Class III director elected at the Corporation's annual meeting of stockholders in 2020 shall be elected to a one-year term expiring at the Corporation's annual meeting of stockholders in 2021. Each Class III and Class I director elected at the Corporation's annual meeting of stockholders in 2021 shall be elected to a one-year term expiring at the Corporation's annual meeting of stockholders in 2022. Commencing with the Corporation's annual meeting of stockholders in 2022, the Board of Directors shall no longer be divided into classes, and all directors shall be elected for a one-year term expiring at the next annual meeting of stockholders.

2. Prior to the Corporation's annual meeting of stockholders in 2022, if the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class. In no case will a decrease in the number of directors shorten the term of any incumbent director. Except as otherwise provided in the Bylaws of the Corporation, the directors shall be elected at the annual meeting of the stockholders, and each director elected shall hold office until the annual meeting of stockholders at which that director's term expires and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal.

3. Any director or the whole Board of Directors may be removed from office at any time with the affirmative vote of the holders of a majority of the voting power of the then issued and outstanding shares of the Corporation's stock entitled to vote at an election of directors; provided, however, (i) until the Board of Directors ceases to be classified at the Corporation's annual meeting of stockholders in 2022, such removal may only be for cause, and (ii) commencing with the Corporation's annual meeting of stockholders in 2022, such removal may be with or without cause.

THIRD: Except as expressly amended herein, all other provisions of the Certificate shall remain in full force and effect.

FOURTH: That the foregoing amendments were duly adopted by the Board of Directors and by the stockholders of the Corporation in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of the Corporation, does hereby execute this Certificate of Amendment to the Certificate of Incorporation, as amended, this 8th day of May, 2019.

MOLINA HEALTHCARE, INC.

By: _____
Joseph Zubretsky
Chief Executive Officer

DocuSign

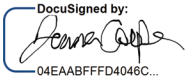
Certificate Of Completion

Envelope Id: 8ABF30A7203C4A8A828C75DD003BFDB4
Status: Completed
Subject: Complete with DocuSign: MOH - No Action Letter (Chevedden) [12.26.23].pdf
Source Envelope:
Document Pages: 118
Signatures: 1
Certificate Pages: 3
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Disabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Catriela Cohen
555 West Fifth Street, Suite 300
Los Angeles, CA 90013
Catriela.Cohen@lw.com
IP Address: 136.179.7.150

Record Tracking

Status: Original
12/26/2023 3:59:57 PM
Holder: Catriela Cohen
Catriela.Cohen@lw.com
Location: DocuSign

Signer Events	Signature	Timestamp
Jenna Cooper jenna.cooper@lw.com Partner Security Level: Email, Account Authentication (None)	DocuSigned by:  04EAABFFFD4046C... Signature Adoption: Drawn on Device Using IP Address: 24.51.112.57 Signed using mobile	Sent: 12/26/2023 4:01:46 PM Viewed: 12/26/2023 4:29:17 PM Signed: 12/26/2023 4:30:29 PM

Electronic Record and Signature Disclosure:
Accepted: 12/26/2023 4:29:17 PM
ID: d051ab6d-9013-4d5e-8613-1d42e9f19972

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	12/26/2023 4:01:46 PM
Certified Delivered	Security Checked	12/26/2023 4:29:17 PM
Signing Complete	Security Checked	12/26/2023 4:30:29 PM
Completed	Security Checked	12/26/2023 4:30:29 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Latham & Watkins (we, us or Company) may be required by law to provide to you certain written notices or disclosures and/or may be a party to or facilitate transactions in which you are a signatory to documents (such notices, disclosures and documents are described herein as Documents). We describe below the terms and conditions for providing to you documents electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully as it relates to our provision of Documents to you in electronic form. If you are able to access this information electronically, wish to receive Documents electronically and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this notice. By clicking 'I agree' below, you consent to our delivering any and all Documents to you electronically, in our discretion, unless and until you give us notice of withdrawal of your consent to electronic delivery. We describe how you can withdraw your consent, below.

Obtaining paper copies and withdrawal of consent

You may request paper copies of the Documents from us at any time within 180 days of the electronic signing of the Document. In addition, if you elect to create a DocuSign signer account, you will have the ability to download and print any documents we send to you through your DocuSign user account within 180 days after such documents are signed. You also may withdraw your consent to electronic delivery of Documents at any time. If you wish for us to send you paper copies of any Documents or if you wish to withdraw your consent to electronic delivery of Documents, you may make such request by emailing such a request to your principal contact at Latham & Watkins LLP or by sending a paper request to your principal contact at Latham & Watkins. Any such request should specifically identify the Document of which you wish to receive a paper copy, and must state your e-mail address, full name, US Postal address, and telephone number. You also may withdraw your consent by declining to sign a document from within your DocuSign session and, on the subsequent page, select the check-box indicating you wish to withdraw your consent.

Consequences of changing your mind

If you elect to receive Documents only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and deliver services to you. If you withdraw your consent you will no longer be able to use your DocuSign account to receive Documents or to electronically sign Documents from us.

To advise of your new e-mail address

If you wish to change your email address, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

Utilization of Electronic Signatures

The DocuSign platform is being made available to you in order to facilitate e-signature. In so doing, Latham & Watkins accepts no liability associated with the use of the DocuSign platform and, save as expressly advised, offers no opinion on the validity or enforceability of this or any other form of document execution or delivery in any jurisdiction. A detailed e-signature legality guide provided by DocuSign Inc. is available here: https://www.docusign.com/how-it-works/legality/global.

Required hardware and software

Operating Systems:	Windows 2000®, Windows XP®, Windows Vista®, Mac OS®
Browsers:	Final release versions of Internet Explorer ® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please so indicate by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Latham & Watkins as described above, I consent to receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that Latham & Watkins elects to make available to me electronically during the course of my relationship with Latham & Watkins.

January 9, 2024

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

 # 1 Rule 14a-8 Proposal
Molina Healthcare, Inc. (MOH)
Simple Majority Vote
John Chevedden
471496

Ladies and Gentlemen:

This is a counterpoint to the December 26, 2023 no-action request.

The no action request does not discuss the second and third sentence of the resolved statement:

"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."

To the contrary the no action request only addressed the first sentence of the resolved statement as illustrated on the attached Page 5 of the no action request.

Sincerely,

John Chevedden

cc: Jeffrey Don Barlow

All other matters, unless a different vote is required by law, stock exchange rule, Charter or Bylaws	Vote of the holders of a majority in voting power of the shares present in person or represented by proxy and entitled to vote on such matter	Bylaws, Section 2.9

As noted in the table above, the Company does not have any voting standard in its Charter or Bylaws that would require anything greater than a simple majority vote.

The Staff has found consistently that proposals calling for the elimination of provisions requiring a "greater than simple majority vote" are excludable under Rule 14a-8(i)(10) in situations where a company's governing documents do not contain any supermajority voting requirements. For example, in *AECOM, Inc.* (avail. Nov. 1, 2016), the Staff granted no-action relief and allowed the company to exclude a proposal nearly identical to the Proposal on substantial implementation grounds. The proposal in AECOM requested that "the Board of Directors take each step necessary so that each voting requirement … 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". At that time, AECOM had a plurality voting standard in place for the election of directors and, like the Company, a majority of shares present in person or represented by proxy standard for other matters (prior to submission of the no-action request, AECOM's Board had approved the amendment of the company's certificate of incorporation to remove its one remaining supermajority voting requirement, subject to stockholder approval). *See also AT&T Inc.* (avail. Mar. 15, 2023) (concurring that AT&T had substantially implemented a supermajority voting proposal after AT&T demonstrated that there were no supermajority voting provisions in the company's certificate of incorporation or bylaws); *KeyCorp.* (avail. Mar. 22, 2019) (concurring with exclusion where the company did not propose making any further changes because its governing documents did not contain any supermajority voting provisions with respect to its common stock); *Ferro Corp.* (avail Feb. 6, 2019) (concurring with exclusion where all supermajority voting provisions had already been eliminated from the company's governing documents, so no further company action was required); and *Brocade Communications Systems, Inc.* (avail. Dec. 19, 2016) (determining that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," and therefore the proposal was excludable under Rule 14a-8(i)(10), because the company did not have any voting standards in place that were more stringent than approval of a majority of the company's outstanding shares). While the Staff has recently taken the position that replacing supermajority voting provisions with a majority of outstanding shares standard does not qualify as substantial implementation, these precedents are inapposite here, as they involved companies that had supermajority voting provisions in place at the time the proposals were submitted. *See, e.g.*, *Rite Aid Corp.* (avail. May 3, 2022); *Fortive Corp.* (avail. Apr. 11, 2022). Here, the Company has no supermajority voting requirements in its Charter or Bylaws and, as a result, there would be nothing further for the Company to do if the Proposal were to be approved by stockholders.

As the Proposal's "essential objective" has already been satisfied, the Proposal may be excluded under Rule 14a-8(i)(10) due to substantial implementation.

[MOH: Rule 14a-8 Proposal, October 13, 2023]
[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. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

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

This is a corporate governance improvement proposal that the Molina Healthcare Board of Directors should have put to a shareholder vote on its own initiative years ago.

This proposal is focused on the simple majority vote topic, but it is worth noting that there are other areas of improvement needed in the corporate governance of Molina Healthcare. For instance executive pay was rejected by 15% of votes in 2023 and Ms. Ronna Romney, age 80, Vice-Chair of the Board and Chair of the nomination committee, was rejected by 13% of votes. A 5% rejection each regarding the say on executive pay topic and director elections is often the norm at well performing companies.

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

January 22, 2024

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

 # 2 Rule 14a-8 Proposal
Molina Healthcare, Inc. (MOH)
Simple Majority Vote
John Chevedden
471496

Ladies and Gentlemen:

This is an additional counterpoint to the December 26, 2023 no-action request.

The no action request does not discuss the second and third sentence of the resolved statement:

"If necessary this means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws.

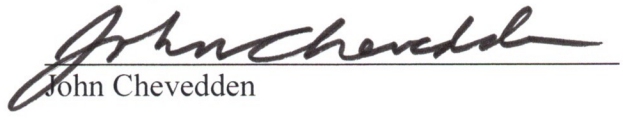
"This includes making the necessary changes in plain English."

To the contrary the no action request only addressed the first sentence of the resolved statement as illustrated on the attached Page 5 of the no action request.

In other words the Board of Directors response only addressed 65-wrods of the 97-word Resolved Statement.

This is similar to the attached *Fortive Corporation* (April 11, 2022) and *Rite Aide Corporation* (May 3, 2022) both of which failed to obtain no action relief.

Sincerely,



John Chevedden

cc: Jeffrey Don Barlow

All other matters, unless a different vote is required by law, stock exchange rule, Charter or Bylaws	Vote of the holders of a majority in voting power of the shares present in person or represented by proxy and entitled to vote on such matter	Bylaws, Section 2.9

As noted in the table above, the Company does not have any voting standard in its Charter or Bylaws that would require anything greater than a simple majority vote.

The Staff has found consistently that proposals calling for the elimination of provisions requiring a "greater than simple majority vote" are excludable under Rule 14a-8(i)(10) in situations where a company's governing documents do not contain any supermajority voting requirements. For example, in *AECOM, Inc.* (avail. Nov. 1, 2016), the Staff granted no-action relief and allowed the company to exclude a proposal nearly identical to the Proposal on substantial implementation grounds. The proposal in AECOM requested that "the Board of Directors take each step necessary so that each voting requirement … 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". At that time, AECOM had a plurality voting standard in place for the election of directors and, like the Company, a majority of shares present in person or represented by proxy standard for other matters (prior to submission of the no-action request, AECOM's Board had approved the amendment of the company's certificate of incorporation to remove its one remaining supermajority voting requirement, subject to stockholder approval). *See also AT&T Inc.* (avail. Mar. 15, 2023) (concurring that AT&T had substantially implemented a supermajority voting proposal after AT&T demonstrated that there were no supermajority voting provisions in the company's certificate of incorporation or bylaws); *KeyCorp.* (avail. Mar. 22, 2019) (concurring with exclusion where the company did not propose making any further changes because its governing documents did not contain any supermajority voting provisions with respect to its common stock); *Ferro Corp.* (avail Feb. 6, 2019) (concurring with exclusion where all supermajority voting provisions had already been eliminated from the company's governing documents, so no further company action was required); and *Brocade Communications Systems, Inc.* (avail. Dec. 19, 2016) (determining that the company's "policies, practices and procedures compare favorably with the guidelines of the proposal," and therefore the proposal was excludable under Rule 14a-8(i)(10), because the company did not have any voting standards in place that were more stringent than approval of a majority of the company's outstanding shares). While the Staff has recently taken the position that replacing supermajority voting provisions with a majority of outstanding shares standard does not qualify as substantial implementation, these precedents are inapposite here, as they involved companies that had supermajority voting provisions in place at the time the proposals were submitted. *See, e.g.*, *Rite Aid Corp.* (avail. May 3, 2022); *Fortive Corp.* (avail. Apr. 11, 2022). Here, the Company has no supermajority voting requirements in its Charter or Bylaws and, as a result, there would be nothing further for the Company to do if the Proposal were to be approved by stockholders.

As the Proposal's "essential objective" has already been satisfied, the Proposal may be excluded under Rule 14a-8(i)(10) due to substantial implementation.

[MOH: Rule 14a-8 Proposal, October 13, 2023]
[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. Supermajority voting requirements have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to "What Matters in Corporate Governance" by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School. Supermajority requirements are used to block initiatives supported by most shareowners but opposed by a status quo management.

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

This is a corporate governance improvement proposal that the Molina Healthcare Board of Directors should have put to a shareholder vote on its own initiative years ago.

This proposal is focused on the simple majority vote topic, but it is worth noting that there are other areas of improvement needed in the corporate governance of Molina Healthcare. For instance executive pay was rejected by 15% of votes in 2023 and Ms. Ronna Romney, age 80, Vice-Chair of the Board and Chair of the nomination committee, was rejected by 13% of votes. A 5% rejection each regarding the say on executive pay topic and director elections is often the norm at well performing companies.

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

Delete "if necessary"

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

DIVISION OF
CORPORATION FINANCE

April 11, 2022

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

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

Dear Mr. Gerber:

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

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

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

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

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

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

DIVISION OF
CORPORATION FINANCE

April 12, 2023

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

Re: Rite Aid Corporation (the "Company")
Incoming letter dated February 13, 2023

Dear Marc S. Gerber:

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

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(f) because the Proponent did not comply with Rule 14a-8(b)(1)(iii). As required by Rule 14a-8(f), the Company notified the Proponent of the problem, and the Proponent failed to adequately correct it. 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(b)(1)(iii) and 14a-8(f).

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/2022-2023-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden