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

DIVISION OF
CORPORATION FINANCE

April 4, 2023

Raquel Fox
Skadden, Arps, Slate, Meagher & Flom LLP

Re: PayPal Holdings, Inc. (the "Company")
Incoming letter dated January 20, 2023

Dear Raquel Fox:

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 of directors initiate the appropriate process to amend the Company's governing documents to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, and that a director who does not receive a majority vote shall only serve for 180 days or less after failure to receive a majority vote.

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

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
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TORONTO

BY EMAIL (shareholderproposals@sec.gov)

January 20, 2023

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

RE: PayPal Holdings, Inc. – 2023 Annual Meeting
Omission of Shareholder Proposal of
John Chevedden

Ladies and Gentlemen:

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), we are writing on behalf of our client, PayPal Holdings, Inc., a Delaware corporation (the "Company"), to request that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with the Company's view that, for the reasons stated below, it may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by John Chevedden (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2023 annual meeting of shareholders (the "2023 proxy materials").

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company's intent to omit the Proposal from the 2023 proxy materials.

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

I. The Proposal

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

> Resolved: Shareholders hereby request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company's articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote.

II. Basis for Exclusion

We hereby respectfully request that the Staff concur with the Company's view that the Proposal may be excluded from the 2023 proxy materials pursuant to Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

III. Background

The Company received the Proposal and a cover letter from the Proponent via email on November 13, 2022. On November 20, 2022, the Company received via email a letter from TD Ameritrade, dated November 20, 2022, verifying the Proponent's continuous ownership of at least the requisite amount of stock for at least the requisite period preceding and including the date of submission of the Proposal. On December 20, 2022, the Company received a revised version of the Proposal via email, accompanied by a cover letter dated December 20, 2022. Copies of the Proposal, cover letters and related correspondence are attached hereto as Exhibit A.

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

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the "1983 Release"); Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company.[1] *See* 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company's policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g., IDACORP, Inc.* (Apr. 1, 2022); *Edison Int'l* (Feb. 23, 2022); *JPMorgan Chase & Co.* (Feb. 5, 2020); *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Ryder System, Inc.* (Feb. 11, 2015). In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objective of the proposal, even if the proposal had not been implemented exactly as proposed by the proponent. *See, e.g.*, *The Wendy's Co.* (Apr. 10, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report).

In particular, the Staff has permitted exclusion under Rule 14a-8(i)(10) of proposals requesting implementation of a majority voting standard for uncontested director elections where the company has already amended or agreed to amend its

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[1] While there is currently a proposed amendment to Rule 14a-8(i)(10) that would modify this standard, such proposal has not been adopted. Accordingly, the standard discussed above remains the current Commission-adopted standard.

bylaws to provide for such voting standard. *See, e.g., AECOM* (Dec. 21, 2018); *Kellogg Co.* (Dec. 27, 2017); *Genomic Health, Inc.* (Mar. 13, 2015); *3D Systems Corp.* (Jan. 21, 2015); *Edison Int'l* (Dec. 23, 2010); *Symantec Corp.* (June 3, 2010); *The Dow Chemical Co.* (Mar. 3, 2008); *American Insurance Group, Inc.* (Mar. 12, 2008); *Citigroup Inc.* (Mar. 8, 2007); *AT&T Inc.* (Jan. 18, 2007) (each permitting exclusion of a proposal under Rule 14a-8(i)(10) where the company had amended or agreed to amend its bylaws to provide for a majority voting standard in uncontested director elections).

The Staff also has consistently permitted exclusion under Rule 14a-8(i)(10) where a company has implemented a majority voting standard for uncontested director elections in its bylaws and has adopted a majority voting or director resignation policy to address the treatment of a "holdover director," including where the resignation process does not align precisely with the process contained in the proposal. For example, in *AECOM* (Dec. 21, 2018), the company adopted a majority voting bylaw amendment and amended its corporate governance guidelines to implement a resignation policy providing that any director fails to be re-elected by the majority of votes cast would be expected to tender his or her resignation and that the board would act on the resignation within 90 days following the election. Although the proposal requested that "holdover directors" resign immediately, the Staff nonetheless permitted exclusion under Rule 14a-8(i)(10) and noted that "the [c]ompany's bylaws compare favorably with the guidelines of the [p]roposal and that the [c]ompany has, therefore, substantially implemented the [p]roposal." *See also, e.g., Kellogg Co.* (Dec. 27, 2017); *Genomic Health, Inc.* (Mar. 13, 2015); *American Insurance Group, Inc.* (Mar. 12, 2008).

In this instance, the Company has already substantially implemented the Proposal, the essential objective of which is to "amend [the] Company's articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality standard retained for contested director elections." In fact, the Company has required a majority vote standard for uncontested director elections from the time that it became an independent public company in July 2015 following its separation from eBay Inc. Section 2.2 of the Company's Amended and Restated Bylaws (the "Bylaws") already provides that the election of directors shall be determined by the affirmative vote of a majority of the votes cast at the annual meeting of shareholders, except in a contested election, in which case director nominees receiving a plurality of the votes cast shall be elected. A copy of the Bylaws (attached hereto as Exhibit B) was included as an exhibit to the Current Report on Form 8-K filed with the Commission on July 20, 2015 (attached hereto as Exhibit C) to provide public notice of the amended and restated Bylaws. Indeed, this could not be a more axiomatic example of a company's substantial implementation of a proposal, and the impetus behind the Proponent's submission of this Proposal is baffling.

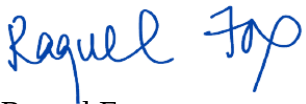
In addition, the Company has substantially implemented the Proposal to the extent it expresses a concern with the treatment of "holdover directors." The final sentence of the Proposal's resolved clause requests that a director who is not re-elected "only serve for 180-days or less after failure to receive a majority vote." The purpose of such requirement, according to the Proposal, is "[t]o allow an orderly transition." Again, the Company already has in place a resignation policy for "holdover directors." Specifically, the Company's Bylaws and the Governance Guidelines of the Board of Directors (the "Governance Guidelines," attached hereto as Exhibit D) provide that each incumbent Company director nominated for re-election is expected to tender a resignation to the Board in advance of the annual meeting of shareholders. In the event an incumbent director fails to receive a majority of the votes cast, the Governance and Nominating Committee, or a committee of the Board consisting solely of independent directors that does not include such incumbent director, is tasked with determining whether to accept such director's resignation. Except in certain exceptional circumstances, such decision must be made within 90 days from the certification of the election results and publicly disclosed in a Current Report on Form 8-K filed with the Commission. Accordingly, the Company has, in its current policy, effectively addressed the underlying concern of the Proposal by empowering the Board to secure the resignation of a director who fails to receive a majority vote and to facilitate an orderly transition in a manner that compares favorably with the Proposal, even if the process is not exactly the same as the request made by the Proponent. Moreover, the Company's current policy provides for a faster transition than requested in the Proposal.

Accordingly, the Company believes that the Proposal may be excluded from its 2023 proxy materials pursuant to Rule 14a-8(i)(10) as substantially implemented.

V. Conclusion

Based upon the foregoing analysis, the Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from its 2023 proxy materials. Should the Staff disagree with the conclusions set forth in this letter, or should any additional information be desired in support of the Company's position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff's response. Please do not hesitate to contact the undersigned at (202) 371-7050.

Very truly yours,



Raquel Fox

Enclosures

cc: Brian Y. Yamasaki
Vice President, Corporate Legal and Secretary
PayPal Holdings, Inc.

John Chevedden

EXHIBIT A

(see attached)

JOHN CHEVEDDEN

[redacted] [redacted]

Mr. Brian Yamasaki
Corporate Secretary
PayPal Holdings, Inc. (PYPL)
[redacted]

Dear Mr. Yamasaki,

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 holding the required amount of Company shares through the date of the Company's 2023 Annual Meeting of Stockholders as is/will be documented in my ownership proof.

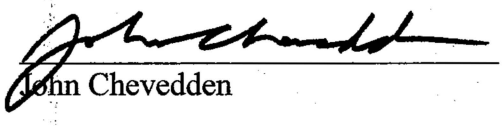
This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

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. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

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

Sincerely,



John Chevedden

November 22, 2022

Date

cc: Jacquie Katzel <[redacted]>

[PYPL: Rule 14a-8 Proposal, November 12, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Adopt that Directors be Elected by Majority Vote

Resolved: Shareholders hereby request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company's articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote.

In order to provide shareholders a meaningful role in director elections, our Company's current director election standard should be changed form a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under the current PayPal voting system, a director can be elected if he owns only one share of stock and this one share is the only share that votes for him.

Please vote yes:

Adopt that Directors be Elected by Majority Vote – Proposal 4

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

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

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

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

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

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

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

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. I intend to continue holding the same required amount of Company shares through the date of the Company's 2023 Annual Meeting of Stockholders as is/will be documented in my ownership proof.

Please acknowledge this proposal promptly by email [redacted].

I do 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**.

JOHN CHEVEDDEN

[redacted] [redacted]

Mr. Brian Yamasaki
Corporate Secretary
PayPal Holdings, Inc. (PYPL)
[redacted]

Revised December 20, 2022

Dear Mr. Yamasaki,

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 holding the required amount of Company shares through the date of the Company's 2023 Annual Meeting of Stockholders as is/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. This is important because it is not infrequent that rule 14a-8 proposals have been within 1% of being approved by shareholders. The rule 14a-8 proposal title is a key part of the rule 14a-8 proposal submission.

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

Sincerely,

John Chevedden

November 22, 2022
Date

cc: Jacquie Katzel <[redacted]>

[PYPL: Rule 14a-8 Proposal, November 12, 2022 | Revised December 20, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Adopt Majority Vote Standard for Director Elections

Resolved: Shareholders hereby request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company's articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote.

In order to provide shareholders a meaningful role in director elections, our Company's current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under the current PayPal voting system, a director can be elected if the director owns only one share of PayPal stock and votes this one share for himself.

More than 77% of the companies in the S&P 500 have already adopted majority voting for uncontested elections. Our company has an opportunity to join the growing list of companies that have already adopted this standard.

Please vote yes:
Adopt Majority Vote Standard for Director Elections – Proposal 4
[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

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(I)(3) in the following circumstances:

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

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

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

The 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 2023 Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted].

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**.

EXHIBIT B

(see attached)

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

PAYPAL HOLDINGS, INC.

(a Delaware corporation)

PayPal Holdings, Inc. (the "Corporation"), pursuant to the provisions of Section 109 of the Delaware General Corporation Law, hereby adopts these Amended and Restated Bylaws, which restate, amend and supersede the bylaws of the Corporation, as previously amended and restated, in their entirety as described below:

ARTICLE I

STOCKHOLDERS

Section 1.1 Place of Meetings. Meetings of the stockholders of the Corporation may be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law.

Section 1.2 Annual Meetings. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date and time, as the Board of Directors shall each year fix. Any other proper business may be transacted at the annual meeting.

Section 1.3 Special Meetings. Special meetings of the stockholders may be called and business at such special meetings may be transacted only in accordance with the provisions of Article VII of the Certificate of Incorporation (defined below).

Section 1.4 Notice of Meetings. Notice of all meetings of stockholders shall be given that shall state the place, if any, date and time of the meeting, 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 meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation as currently in effect (the "Certificate of Incorporation"), such notice 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.

Section 1.5 Manner of Giving Notice; Affidavit of Notice.

(a) Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the Corporation.

(b) Except as otherwise prohibited by the Delaware General Corporation Law and without limiting the foregoing, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to (and not properly revoked by written notice to the Corporation) by the stockholder to whom the notice is given, to the extent such consent is required by the Delaware General Corporation Law. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent of the Corporation, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Any such notice shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.

(c) For the purposes of these Bylaws, an "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, 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.

(d) Except as otherwise prohibited under the Delaware General Corporation Law and without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws may be given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if a stockholder fails to object in writing to the Corporation within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice in accordance with this Section 1.5(d). Any such consent shall be revocable by the stockholders by written notice to the Corporation.

(e) An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 1.6 Adjournments. Any meeting of stockholders may adjourn from time to time to reconvene at the same or another place, if any, or by means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and notice need not be given of any such adjourned meeting if the place, if any, time and date 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; provided, however, that 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, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting.

Section 1.7 Quorum. At each meeting of stockholders, the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, except if otherwise required by applicable law. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series then outstanding and entitled to vote present in person or by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation's 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 are 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 or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity.

Section 1.8 Conduct of Business. Meetings of stockholders shall be presided over by such person as the Board of Directors may designate as chairman of the meeting, or, in the absence of such a person, the Chairman of the Board, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting. The Secretary of the Corporation shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, adjourning the meeting if the chairman determines in his or her sole discretion that an adjournment is advisable, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot.

Section 1.9 Voting; Proxies. Unless otherwise provided by law or the Certificate of Incorporation, each stockholder shall be entitled to one (1) vote for each share of stock held by such stockholder of record according to the records of the Corporation. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 1.10 of these Bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the Delaware General Corporation Law. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Unless otherwise provided in the Certificate of Incorporation or a Certificate of Designation relating to a series of Preferred Stock, directors shall be elected as provided in Section 2.2 of these Bylaws. Unless otherwise provided by applicable law, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock entitled to vote thereon that are present in person or represented by proxy at the meeting.

Section 1.10 Fixing Date for Determination of Stockholders of Record. 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 or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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, in advance, a record date, which (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be less than ten (10) nor more than sixty (60) days before the date of such meeting, and (ii) in the case of any other action, shall not be more than sixty (60) days prior to any such other action. If no record date is fixed by the Board of Directors, then the record date shall be as provided by applicable law. 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.

Section 1.11 List of Stockholders Entitled to Vote. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, 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 principal place of business of the Corporation. 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 the stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to

be held solely by means of remote communication, then the 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. Except as otherwise provided by law, such list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.11 or to vote in person or by proxy at any meeting of the stockholders. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

Section 1.12 Inspectors of Elections.

(a) Applicability. Unless otherwise provided in the Corporation's Certificate of Incorporation or required by the Delaware General Corporation Law, the following provisions of this Section 1.12 shall apply only if and when the Corporation has a class of voting stock that is:

(i) listed on a national securities exchange;

(ii) authorized for quotation on an interdealer quotation system of a registered national securities association; or

(iii) held of record by more than 2,000 stockholders; in all other cases, observance of the provisions of this Section 1.12 shall be optional, and at the discretion of the Corporation.

(b) Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

(c) Inspector's Oath. Each inspector of election, before entering upon the discharge of 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.

(d) Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall:

(i) ascertain the number of shares outstanding and the voting power of each share;

(ii) determine the shares represented at a meeting and the validity of proxies and ballots;

(iii) count all votes and ballots;

(iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors; and

(v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(e) Opening and Closing of Polls. 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 by the inspectors at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(f) Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with Section 211(e) or Section 212(c)(2) of the Delaware General Corporation Law, or any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) of the Delaware General Corporation Law, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.12 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 1.13 Notice of Stockholder Business to Be Brought Before an Annual or Special Meeting.

(a) Business Properly Brought Before an Annual or Special Meeting. 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 (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 1.13 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 1.13 as to such business. Except for proposals properly made in accordance with Rule 14a-8 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 "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board

of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders (other than pursuant to a request for a special meeting in accordance with the requirements set forth in Article VII of the Certificate of Incorporation (a "Special Meeting Request")), and the only matters that may be brought before a special meeting are the matters specified in the Corporation's notice of meeting. Stockholders seeking to nominate persons for election to the Board, if permitted by Article VII of the Certificate of Incorporation, must comply with Section 1.14 of these Bylaws, and this Section 1.13 shall not be applicable to nominations except as expressly provided in Section 1.14 of these Bylaws.

(b) Requirement of Timely Notice of Stockholder Business. Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.13. To be timely, a stockholder's notice with respect to an annual meeting of stockholders (other than a notice submitted in order to include a Stockholder Nominee (as defined below) in the Corporation's proxy materials, as defined and described in Clause E of Article VI of the Certificate of Incorporation) must be delivered by overnight express courier or registered mail, return receipt requested, 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; provided, however, that if the date of the annual meeting is 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 earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). 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 Timely Notice as described above.

(c) Requirements for Proper Form of Stockholder Notice of Proposed Business. To be in proper form for purposes of this Section 1.13, a stockholder's notice to the Secretary shall set forth:

(i) Stockholder Information. 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 Exchange 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 and (C) a representation whether such Proposing Person intends or is part of a group that intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock required to approve or adopt the proposal or (y) otherwise to solicit proxies from stockholders in support of such proposal;

(ii) Information Regarding Disclosable Interests. As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("Synthetic Equity Interests"), which such Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("Short Interests"), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, and (F) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing 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 Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (F) 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; and

(iii) Description of Proposed Business. As to each item of business the stockholder proposes to bring before the annual or special meeting, (A) a reasonably brief description of the business desired to be brought before the annual or special meeting, the reasons for conducting such business at the annual or special 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 (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder.

(iv) Definition of Proposing Person. For purposes of this Section 1.13, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual or special 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 or special meeting is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.

(d) Update and Supplement of Stockholder Notice of Proposed Business. A stockholder providing notice of business proposed to be brought before an annual or special meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.13 or in any Special Meeting Request shall be true and correct as of the record date for 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 the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date of the meeting, or in the case of any adjournment or postponement thereof, eight (8) business days prior to the date of such adjournment or postponement. For the avoidance of doubt, the obligation to update and supplement as set forth in this Section 1.14(d) or any other Section of these Bylaws shall not be deemed to extend any applicable deadlines under these Bylaws, cure deficiencies in any notice of business or permit a change in the proposal, business or resolution proposed to be brought before a meeting of the stockholders.

(e) Business Not Properly Brought Before a Meeting. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual or special meeting except in accordance with this Section 1.13. 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 1.13, 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.

(f) Exchange Act Compliance. This Section 1.13 is expressly intended to apply to any business proposed to be brought before an annual or special meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this Section 1.13 with respect to any business proposed to be brought before an annual or special meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 1.13 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 Exchange Act.

(g) Definition of Public Disclosure. For purposes of these Bylaws, "public disclosure" 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 Exchange Act.

Section 1.14 Nominations.

(a) Who May Make Nominations. Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (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) may be made at such meeting only in accordance with the provisions of Clauses D and E of Article VI of the Certificate of Incorporation and any requirements imposed by this Section 1.14 as to such nomination. Clauses D and E of Article VI of the Certificate of Incorporation, together with any additional requirements imposed by this Section 1.14, 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 (other than, if permitted by Article VII of the Certificate of Incorporation, pursuant to a Special Meeting Request). Any person nominated for election to the Board of Directors pursuant to Clause E of Article VI of the Certificate of Incorporation shall be referred to herein as a "Stockholder Nominee."

(b) Requirement of Timely Notice of Stockholder Nominations. 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 (i) provide Timely Notice (as defined in Section 1.13 of these Bylaws) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.14. 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 such 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 (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.14. To be timely, a stockholder's notice (other than a notice submitted in order to include a Stockholder Nominee (as defined above) in the Corporation's proxy materials, as defined and described in Clause E of Article VI of the Certificate of

Incorporation) for nominations to be made at a special meeting (other than, if permitted by Article VII of the Certificate of Incorporation, pursuant to a Special Meeting Request) must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 1.13 of these Bylaws) of the date of such special meeting was first made. 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.

(c) Requirements for Proper Form of Notice of Stockholder Nominations. To be in proper form for purposes of this Section 1.14, a stockholder's notice to the Secretary shall set forth:

(i) Stockholder Information. As to each Nominating Person (as defined below), (A) the name and address of such Nominating 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 Exchange Act) by such Nominating Person, except that such Nominating Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Nominating Person has a right to acquire beneficial ownership at any time in the future and (C) a representation whether such Nominating Person intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock reasonably believed by the Nominating Person to be sufficient to elect the nominee or nominees proposed to be nominated by the Nominating Person;

(ii) Information Regarding Disclosable Interests. As to each Nominating Person, any Disclosable Interests (as defined in Section 1.13(c)(ii), except that for purposes of this Section 1.14 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 1.13(c)(ii)), and the disclosure in clause (F) of Section 1.13(c)(ii) shall be made with respect to the election of directors at the meeting;

(iii) Information Regarding Proposed Nominees. As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 1.14 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee 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 Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary

agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates, 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 proposed nominee were a director or executive officer of such registrant, and (D) a statement as to whether the proposed nominee, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon the occurrence of both (1) such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and (2) acceptance of such resignation in accordance with Section 2.2 of these Bylaws and the Corporation's Governance Guidelines for the Board of Directors; and

(iv) Other Information to Be Furnished by Proposed Nominees. The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Governance Guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(v) Definition of Nominating Person. For purposes of this Section 1.13, 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 affiliate or associate of such stockholder or beneficial owner.

(d) Update and Supplement of Stockholder Notice of Nominations. A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.14 or, if permitted by Article VII of the Certificate of Incorporation, in any Special Meeting Request, shall be true and correct as of the record date for 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 the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date of the meeting, or in the case of any adjournment or postponement thereof, eight (8) business days prior to the date of such adjournment or postponement. For the avoidance of doubt, the obligation to update and supplement as set forth in this Section 1.13(d) or any other Section of these Bylaws shall not be deemed to extend any applicable deadlines under these Bylaws, cure deficiencies in any notice of nominations or permit a change in the nominees or nominations proposed to be made at a meeting of the stockholders.

(e) Defective Nominations. Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 1.14. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 1.14, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(f) Compliance with Exchange Act. In addition to the requirements of this Section 1.14 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Number; Qualifications. The Board of Directors shall consist of one or more members. The number of directors shall be fixed from time to time exclusively by resolution of the Board of Directors. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

Section 2.2 Election.

(a) The directors shall be elected as provided in the Certificate of Incorporation.

(b) Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares represented and entitled to vote therefor at a meeting of the stockholders for the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board of Directors determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board of Directors has not rescinded such determination by the date that is twenty (20) days prior to the date of the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote at such meeting with respect to the election of such director. For purposes of this Section 2.2, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director exceeds the number of votes cast "against" that director. In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors or to "abstain" from such vote and shall not have the ability to cast any other vote with respect to such election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the ability to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or classes or series, the determination as to whether an election constitutes a Contested Election shall be made on a class by class or series by series basis, as applicable.

(c) In the event one or more incumbent directors (each, a "Subject Director") fails to receive the affirmative vote of a majority of the votes cast at an Election Meeting at which there was no Contested Election, either (i) the Corporate Governance and Nominating Committee or (ii) if one or more of the members of the Corporate Governance and Nominating Committee is a Subject Director or the Board of Directors determines that any decision to be made with respect to a Subject Director should be made by a committee other than the Corporate Governance and Nominating Committee, a committee consisting solely of independent directors (as determined in accordance with any stock exchange rules and regulations applicable to the Corporation and any additional criteria set forth in the Corporation's Governance Guidelines for the Board of Directors or Corporate Governance and Nominating Committee Charter, as applicable) who are not Subject Directors (the committee described in clause (i) or (ii) of this sentence, the "Committee") will make a determination as to whether to accept or reject any previously tendered Resignations (as defined below), or whether other action should be taken (including whether to request that a Subject Director resign from the Board of Directors if no Resignation had been tendered prior to the relevant Election Meeting). The Committee will act with respect to any Subject Directors within ninety (90) days from the date of the certification of the election results and shall notify the Subject Directors of its decision. The Committee may consider all factors it considers relevant, including any stated reasons for "against" votes, whether the underlying cause or causes of the "against" votes are curable, the relationship between such causes and the actions of such Subject Director, the factors, if any, set forth in the Corporation's Governance Guidelines for the Board of Directors or other policies that are to be considered by the Corporate Governance and Nominating Committee in evaluating potential candidates for the Board of Directors as such criteria relate to such Subject Director, the length of service of such Subject Director, the size and holding period of such Subject Director's stock ownership in the Corporation, and such Subject Director's contributions to the Corporation. Subject Directors shall not participate in the deliberation or decision(s) of the Committee. The Corporation shall publicly disclose the decision(s) of the Committee in a Current Report on Form 8-K filed with the Securities and Exchange Commission. Notwithstanding the foregoing, if the result of accepting all tendered Resignations then pending and requesting resignations from incumbent directors who did not submit a Resignation prior to the relevant Election Meeting, would be that the Corporation would have fewer than three (3) directors who were in office before the election of directors, the Committee may determine to extend such ninety (90)-day period by an additional ninety (90) days if it determines that such an extension is in the best interests of the Corporation and its stockholders. For purposes of this Section 2.2, a "Resignation" is an irrevocable resignation submitted by an incumbent director nominated for re-election prior to the relevant Election Meeting that will become effective upon the occurrence of both (i) the failure to receive the affirmative vote of a majority of the votes cast at an Election Meeting at which there was no Contested Election and (ii) acceptance of such resignation by the Committee.

(d) If a Subject Director's tendered Resignation is not accepted by the Committee or such Subject Director does not otherwise submit his or her resignation to the Board of Directors, such director shall continue to serve until his or her successor is duly elected, or his or her earlier resignation or removal pursuant to Section 2.3. If a Subject Director's Resignation is accepted by the Committee pursuant to this Section 2.2, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Section 2.3 or decrease the size of the Board of Directors pursuant to the provisions of Section 2.1 of these Bylaws.

Section 2.3 Resignation; Removal; Vacancies. Subject to the provisions of the Certificate of Incorporation, each director shall serve until his or her successor is duly elected and qualified, or until his or her earlier death, resignation, retirement or removal from service as a director. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Subject to the rights of any holders of Preferred Stock then outstanding and the Certificate of Incorporation:

(i) the holders of a majority of the shares entitled to vote in an election of directors may remove any director or the entire Board of Directors with or without cause, and

(ii) any vacancy occurring in the Board of Directors for any reason, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Section 2.4 Regular Meetings. Regular meetings of the Board of Directors may be held at such places, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board of Directors.

Section 2.5 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the Chief Executive Officer or a majority of the members of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally or in writing, by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, overnight express courier, facsimile, electronic mail or other electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting. The notice shall be deemed given:

(i) in the case of hand delivery or notice by telephone, when received by the director to whom notice is to be given or by any person accepting such notice on behalf of such director,

(ii) in the case of delivery by mail, upon deposit in the United States mail, postage prepaid, directed to the director to whom notice is being given at such director's address as it appears on the records of the Corporation,

(iii) in the case of delivery by overnight express courier, on the first business day after such notice is dispatched, and

(iv) in the case of delivery via facsimile, electronic mail or other electronic transmission, when sent to the director to whom notice is to be given or by any person accepting such notice on behalf of such director at such director's facsimile number or electronic mail address, as the case may be, as it appears on the Corporation's records.

Section 2.6 Telephonic Meetings Permitted. Members of the Board of Directors, or any committee of the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or similar communications equipment shall constitute presence in person at such meeting.

Section 2.7 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the total number of authorized directors shall constitute a quorum for the transaction of business. Except as otherwise provided herein or in the Certificate of Incorporation, or as required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 2.8 Chairman of the Board. The Board of Directors shall have the power to elect the Chairman of the Board from among the members of the Board of Directors. The Chairman of the Board shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe.

Section 2.9 Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, or in his or her absence by the Chief Executive Officer, or in his or her absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.10 Written Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.11 Powers. The Board of Directors may, except as otherwise required by law or the notice is dispatched, and Certificate of Incorporation, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 2.12 Compensation of Directors. Directors, as such, may receive, pursuant to a resolution of the Board of Directors, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board of Directors.

ARTICLE III

COMMITTEES

Section 3.1 Committees. The Board of Directors may, by resolution passed by a majority of the authorized number of directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the Corporation.

Section 3.2 Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV

OFFICERS

Section 4.1 Generally. The officers of the Corporation shall consist of a Chief Executive Officer and/or a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, including a Chief Financial Officer, as may from time to time be appointed by the Board of Directors. All officers shall be elected by the Board of Directors; provided, however, that the Board of Directors may empower the Chief Executive Officer of the Corporation to appoint officers other than the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors.

Section 4.2 Chief Executive Officer. Subject to the control of the Board of Directors and such supervisory powers, if any, as may be given by the Board of Directors, the powers and duties of the Chief Executive Officer of the Corporation are:

(a) To act as the general manager and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of the Corporation;

(b) To preside at all meetings of the stockholders;

(c) To call meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and

(d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board of Directors has not designated any other officer to be the Chief Executive Officer, then the Chairman of the Board shall be the Chief Executive Officer.

Section 4.3 President. The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall have designated another officer as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board of Directors to the Chairman of the Board, and/or to any other officer, the President shall have the responsibility for the general management and the control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board of Directors.

Section 4.4 Vice President. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board of Directors or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

Section 4.5 Chief Financial Officer. Subject to the direction of the Board of Directors and the President, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of chief financial officer.

Section 4.6 Treasurer. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board of Directors or the President may from time to time prescribe.

Section 4.7 Secretary. The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board of Directors. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board of Directors or the President may from time to time prescribe.

Section 4.8 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 4.9 Removal. Any officer of the Corporation shall serve at the pleasure of the Board of Directors and may be removed at any time, with or without cause, by the Board of Directors. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

ARTICLE V

STOCK

Section 5.1 Certificates. The shares of the Corporation may be uncertificated or may be represented by certificates. The Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice-Chairman of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile.

Section 5.2 Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3 Other Regulations. The issue, transfer, conversion and registration of stock certificates or uncertificated shares shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE VI

INDEMNIFICATION

Section 6.1 Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or officer of the Corporation or a Reincorporated Predecessor (as defined below) or is or was serving at the request of the Corporation or a Reincorporated Predecessor (as defined below) as a director, officer or employee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (each such director, officer or employee, a "Covered Person"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation Law, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation shall indemnify any such Covered Person seeking indemnity in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. As used herein, the term "Reincorporated Predecessor" means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger; and (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

Section 6.2 Advance of Expenses. The Corporation shall pay all expenses (including attorneys' fees) incurred by a Covered Person in defending any such proceeding as they are incurred in advance of its final disposition; provided, however, that if the Delaware General Corporation Law then so requires, the payment of such expenses incurred by a Covered Person in advance of the final disposition of such proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Covered Person, to repay all amounts so advanced if it should be determined ultimately that such Covered Person is not entitled to be indemnified under this Article VI or otherwise; and provided, further, that the Corporation shall not be required to advance any expenses to a Covered Person against whom the Corporation directly brings a claim, in a proceeding, alleging that such person has breached his or her duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

Section 6.3 Non-Exclusivity of Rights. The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI. The Board of Directors of the Corporation shall have the power to delegate to such officer or other person as the Board of Directors shall specify the determination of whether indemnification shall be given to any person pursuant to this Section 6.3.

Section 6.4 Indemnification Contracts. The Board of Directors is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person 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 employee benefit plans, providing indemnification rights to such person. Such rights may be greater than those provided in this Article VI.

Section 6.5 Continuation of Indemnification. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article VI shall continue notwithstanding that the person has ceased to be a Covered Person and shall inure to the benefit of his or her estate, heirs, executors, administrators, legatees and distributees; provided, however, that the Corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 6.6 Effect of Amendment or Repeal. The provisions of this Article VI shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a Covered Person (whether before or after the adoption of these Bylaws), in consideration of such person's performance of such services, and pursuant to this Article VI, the Corporation intends to be legally bound to each such current or former Covered Person. With respect to current and former Covered Persons, the rights conferred under this Article VI 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 Covered Persons who commence service following adoption of these Bylaws, the rights conferred under this Article VI shall be present contractual rights, and such rights shall fully vest, and be deemed to have vested fully, immediately upon such Covered Person's service in the capacity which is subject to the benefits of this Article VI.

ARTICLE VII

NOTICES

Section 7.1 General Notice. Except as otherwise specifically provided herein or required by law, all notices required to be given pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid overnight express courier or facsimile. Any such notice shall be addressed to the person to whom notice is to be given at such person's address or facsimile number, as the case may be, as it appears on the records of the Corporation. The notice shall be deemed given

(i) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person;

(ii) in the case of delivery by mail, upon deposit in the United States mail, postage prepaid, directed to the person to whom notice is being given at such person's address as it appears on the records of the Corporation;

(iii) in the case of delivery by overnight express courier, on the first business day after such notice is dispatched; and

(iv) in the case of delivery via facsimile, when directed to the person to whom notice is to be given or by any person accepting such notice on behalf of such person.

Section 7.2 Waiver of Notice. Whenever notice is required to be given under any provision of these Bylaws, a written waiver of notice, 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 or any waiver by electronic transmission.

ARTICLE VIII

INTERESTED DIRECTORS

Section 8.1 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

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

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

(iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 9.2 Seal. The Board of Directors may provide for a corporate seal, which shall have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board of Directors.

Section 9.3 Form of Records. Any records maintained by 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 provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the Delaware General Corporation Law.

Section 9.4 Reliance Upon Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5 Certificate of Incorporation Governs. In the event of any conflict between the provisions of the Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

Section 9.6 Severability. If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

ARTICLE X

AMENDMENT

Section 10.1 Amendments. Subject to Section 6.6 of these Bylaws, stockholders of the Corporation holding at least a majority of the Corporation's outstanding voting stock shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Certificate of Incorporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal Bylaws of the Corporation.

EXHIBIT C

(see attached)

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

FORM 8-K

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

Date of Report (Date of earliest event reported): July 17, 2015

PayPal Holdings, Inc.
(Exact name of registrant as specified in its charter)

Delaware	001-36859	47-2989869
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

2211 North First Street
San Jose, CA 95131
(Address of principal executive offices)

(408) 967-1000
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Separation-Related Agreements

On June 26, 2016, PayPal Holdings, Inc. ("PayPal" or the "Company") entered into a separation and distribution agreement with eBay Inc. ("eBay"), pursuant to which eBay agreed to transfer its payments business to PayPal (the "Separation") and distribute 100% of the outstanding common stock of PayPal to eBay stockholders in a tax-free distribution (the "Distribution"). The Distribution was made at 11:59 p.m., New York City time, on July 17, 2015 (the "Effective Time"), to eBay stockholders of record as of the close of business on July 8, 2015. As a result of the Distribution, PayPal is now an independent public company and its common stock is listed under the symbol "PYPL" on The NASDAQ Stock Market.

In connection with the Distribution, on July 17, 2015, PayPal entered into several agreements with eBay that govern the relationship of the parties following the Distribution, including the following:

- Operating Agreement;
- Transition Services Agreement;
- Tax Matters Agreement;
- Employee Matters Agreement; and
- Intellectual Property Matters Agreement.

A summary of certain material features of the agreements can be found in the section entitled "Certain Relationships and Related Party Transactions—Agreements with eBay" in PayPal's Information Statement dated June 29, 2015 (the "Information Statement"), which is included as Exhibit 99.1 to this Form 8-K. This summary is incorporated by reference into this Item 1.01 as if restated in full. This summary is qualified in its entirety by reference to the Operating Agreement, Transition Services Agreement, Tax Matters Agreement, Employee Matters Agreement and Intellectual Property Matters Agreement, which are included with this report as Exhibits 10.1, 10.2, 10.3, 10.4 and 10.5, respectively, each of which is incorporated herein by reference.

Debt Agreements

On July 17, 2015, PayPal, as borrower, and PayPal, Inc., as subsidiary guarantor (the "Guarantor"), entered into a Credit Agreement (the "Credit Agreement") with JPMorgan Chase Bank, N.A., as Administrative Agent (the "Agent"); certain lenders named therein; Deutsche Bank Securities Inc., Bank of America, N.A. and Wells Fargo Bank, National Association as Syndication Agents; BNP Paribas, Citigroup Global Markets Inc., HSBC Securities (USA) Inc. and The Bank of Tokyo-Mitsubishi UFJ, Ltd., as Documentation Agents; and J.P. Morgan Securities LLC, Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and Wells Fargo Securities, LLC, as Joint Lead Arrangers and Joint Book Managers. The Credit Agreement provides for an unsecured $2.0 billion five-year revolving credit facility that includes a $150 million letter of credit sub-facility and a $150 million swingline sub-facility, with available borrowings under the revolving credit facility reduced by the amount of any letters of credit and swingline borrowings outstanding from time to time. The Company may also, subject to the agreement of the applicable lenders, increase the commitments under the revolving credit facility by up to $500 million. Subject to specified conditions, the Company may designate one or more of its subsidiaries as additional borrowers under the Credit Agreement provided that the Company and the Guarantor guarantee all borrowings and other obligations of any such subsidiaries under the Credit Agreement. As of July 17, 2015, no subsidiaries were designated as additional borrowers. Funds borrowed under the Credit Agreement may be used for working capital, capital expenditures, acquisitions and other general corporate purposes of the Company and its subsidiaries.

As of July 17, 2015, no borrowings or letters of credit were outstanding under the Credit Agreement. Accordingly, at July 17, 2015, $2.0 billion of borrowing capacity was available for the purposes permitted by the Credit Agreement.

Loans under the Credit Agreement will bear interest at either (i) the London Interbank Offered Rate ("LIBOR") plus a margin (based on the Company's public debt ratings) ranging from 1.00 percent to 1.625 percent (beginning at 1.25% until the Company receives its first public debt rating) or (ii) a formula based on the Agent's prime rate, the federal funds effective rate or LIBOR plus a margin (based on the Company's public debt ratings) ranging from zero percent to 0.625 percent (beginning at 0.25% until the Company receives its first public debt rating). Subject to certain conditions stated in the Credit Agreement, the Company and any subsidiaries designated as additional borrowers may borrow, prepay and reborrow amounts under the revolving credit facility at any time during the term of the Credit Agreement. The Credit Agreement will terminate and all amounts owing thereunder will be due and payable on July 17, 2020, unless (a) the commitments are terminated earlier, either at the request of the Company or, if an event of default occurs, by the lenders (or automatically in the case of certain bankruptcy-related events), or (b) the maturity date is extended upon the request of the Company, subject to the agreement of the lenders. The Credit Agreement contains customary representations, warranties, affirmative and negative covenants, including financial covenants, events of default and indemnification provisions in favor of the banks. The negative covenants include restrictions regarding the incurrence of liens, subject to certain exceptions. The financial covenants require the Company to meet a quarterly financial test with respect to a minimum consolidated interest coverage ratio and a maximum consolidated leverage ratio, based on the Company's public debt ratings.

The banks party to the Credit Agreement and/or their affiliates have from time to time provided, and/or may in the future provide, various financial advisory, commercial banking, investment banking and other services to the Company and its affiliates, for which they received or may receive customary compensation and expense reimbursement.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the Credit Agreement, which is included with this report as Exhibit 10.6 and is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth under the heading "Debt Arrangements" in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Resignation and Appointment of Directors

The Board of Directors of PayPal (the "Board") expanded its size, effective as of immediately prior to the Effective Time. As of the Effective Time, each of Daniel H. Schulman, John J. Donahoe, Jonathan Christodoro, Pierre M. Omidyar and Frank D. Yeary were elected as a director of the Company, and Robert H. Swan and Michael R. Jacobson, who had been serving as members of the Board, ceased to be directors of PayPal. David M. Moffett, Gail J. McGovern and David W. Dorman remain on the Board and will continue to serve as directors of PayPal following the Distribution.

Biographical and compensation information on each of the directors elected to the Board, as well as on David M. Moffett, Gail J. McGovern and David W. Dorman, can be found in PayPal's Information Statement under the section entitled "Directors—Board of Directors Following the Distribution", which is incorporated by reference into this Item 5.02.

As of the Effective Time:

- Mr. Yeary and Ms. McGovern were appointed to serve as members of the Audit Committee of the Board. Mr. Moffett had already been appointed to serve as a member and chair of the Audit Committee of the Board and will continue to serve in that capacity;
- Mr. Dorman will serve as a member of the Corporate Governance and Nominating Committee of the Board. Ms. McGovern had already been appointed to serve as a member and chair of the Corporate Governance and Nominating Committee of the Board and will continue to serve in that capacity;
- Mr. Christodoro was appointed to serve as a member of the Compensation Committee of the Board. Mr. Dorman had already been appointed to serve as a member and chair of the Compensation Committee of the Board and will continue to serve in that capacity; and
- Mr. Donahoe was appointed as the Non-Executive Chairman of the Board.

Adoption of Plans

In connection with the Distribution, on June 16, 2015, the Board adopted (and as applicable, shareholder approval was obtained) for the following plans:

- PayPal Employee Incentive Plan;
- PayPal Holdings, Inc. 2015 Equity Incentive Award Plan; and
- PayPal Holdings, Inc. Deferred Compensation Plan.

A summary of certain material features of these arrangements can be found in the section entitled "Compensation Discussion and Analysis" and "Certain Relationships and Related Party Transactions—Employee Matters Agreement" in PayPal's Information Statement, which is incorporated by reference into this Item 5.02. This description is qualified in its entirety by reference to Exhibits 10.7, 10.8 and 10.9, respectively, each of which is incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On July 17, 2015, PayPal amended and restated its Certificate of Incorporation (the "Amended and Restated Certificate of Incorporation") and its Bylaws (the "Amended and Restated Bylaws"). A description of the material provisions of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws can be found in PayPal's Information Statement under the section entitled "Description of PayPal's Capital Stock," which is incorporated by reference into this Item 5.03. The description set forth under this Item 5.03 is qualified in its entirety by reference to the full text of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws, which are included with this report as Exhibits 3.1 and 3.2, respectively, each of which is incorporated herein by reference.

Item 5.05 Amendments to the Registrants Code of Ethics, or Waiver of a Provision of the Code of Ethics

In connection with the Distribution, PayPal adopted a Code of Business Conduct and Ethics effective as of immediately prior to the Effective Time. A copy of PayPal's Code of Business Conduct and Ethics is available under the Governance section of PayPal's website at https://investor.paypal-corp.com.

Item 8.01 Other Events

PayPal previously announced that Scott Cook would be appointed to the Board as of immediately prior to the Distribution. Mr. Cook subsequently determined that he would not join the Board.

On July 20, 2015, PayPal issued a press release announcing the completion of the Distribution and the start of PayPal's operations as an independent company. A copy of the press release is attached hereto as Exhibit 99.2.

In connection with the Distribution, the Board adopted Corporate Governance Guidelines, effective as of immediately prior to the Effective Time. A copy of the Company's Corporate Governance Guidelines, is available under the Governance section of PayPal's website at https://investor.paypal-corp.com.

Item 9.01 Financial Statements and Exhibits

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of PayPal Holdings, Inc., dated July 17, 2015
3.2	Amended and Restated Bylaws of PayPal Holdings, Inc., dated July 17, 2015
10.1	Operating Agreement by and among eBay Inc., eBay International AG, PayPal Holdings, Inc., PayPal, Inc., PayPal Pte. Ltd. and PayPal Payments Pte. Holdings S.C.S., dated July 17, 2015
10.2	Transition Services Agreement by and between eBay Inc. and PayPal Holdings, Inc., dated July 17, 2015
10.3	Tax Matters Agreement by and between eBay Inc. and PayPal Holdings, Inc., dated July 17, 2015
10.4	Employee Matters Agreement by and between eBay Inc. and PayPal Holdings, Inc., dated July 17, 2015
10.5	Intellectual Property Matters Agreement by and among eBay Inc., eBay International AG, PayPal Holdings, Inc., PayPal, Inc., PayPal Pte. Ltd. and PayPal Payments Pte. Holdings S.C.S., dated July 17, 2015
10.6	Credit and Guarantee Agreement, dated as of July 17, 2015, by and among PayPal Holdings, Inc., PayPal, Inc., JPMorgan Chase Bank, N.A., as Administrative Agent, and the other parties thereto
10.7	PayPal Employee Incentive Plan
10.8	PayPal Holdings, Inc. 2015 Equity Incentive Award Plan
10.9	PayPal Holdings, Inc. Deferred Compensation Plan
99.1	Information Statement of PayPal Holdings, Inc., dated June 29, 2015.
99.2	Press Release by PayPal Holdings, Inc., dated July 20, 2015

SIGNATURES

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

Date: July 20, 2015

PAYPAL HOLDINGS, INC.

/s/ Russell S. Elmer

Name: Russell S. Elmer
Title: Vice President, Deputy General Counsel and Assistant Secretary

INDEX TO EXHIBITS

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99.2	Press Release by PayPal Holdings, Inc., dated July 20, 2015

EXHIBIT D

(see attached)

GOVERNANCE GUIDELINES OF THE BOARD OF DIRECTORS

The Board of Directors (the "Board") of PayPal Holdings, Inc. (the "Company") has adopted these governance guidelines (the “Guidelines”) to assist it in following corporate practices that serve the best interests of the Company and its stockholders. The Board intends that these Guidelines serve as a flexible framework within which the Board may conduct its business, not as a set of binding legal obligations. The Guidelines should be interpreted in the context of all applicable laws, rules, regulations, listing standards, the Company's Restated Certificate of Incorporation (the “Charter”) and the Amended and Restated Bylaws (the “Bylaws”) and other governing legal documents.

BOARD COMPOSITION; SELECTION OF DIRECTORS; POLICY REGARDING ELECTION OF DIRECTORS

Size of the Board

The number of directors that constitutes the Board shall be fixed from time to time by a resolution adopted by the Board in conformity with the Bylaws. The Board shall periodically review its size to ensure that the current number of members effectively supports the Company.

Board Member Criteria

The Board should be composed of directors chosen on the basis of their character, integrity, judgment, skills, background and experience of particular relevance to the Company. In addition, directors should have high-level managerial experience in a relatively complex organization or be accustomed to dealing with complex problems. Directors should also represent the balanced, best interests of the stockholders as a whole rather than special interest groups or constituencies. At the same time, in addressing the overall composition of the Board, characteristics, including diversity (such as gender, sexual orientation, race, ethnicity, nationality, cultural background and age), should be considered as well to complement the skills, qualifications and expertise that directors bring to the Board. The Governance and Nominating Committee (the “Governance Committee”) is committed to actively seeking highly qualified women and individuals from underrepresented communities to include in the pool from which director candidates are selected. Each director should be an individual of the highest character and integrity, with the ability to work well with others and with sufficient time available to devote to the affairs of the Company to carry out the responsibilities of a director.

Guiding Principles for Board Development and Succession

Board composition should be guided by the following principles, which are focused on maintaining robust and effective governance:

- The Board should be composed of directors who are highly engaged.
- In light of the rapidly changing environment in which the Company's businesses operate, the Board should include individuals with highly relevant professional experience.
- Board refreshment over time is critical to ensuring that the Board as a whole maintains an appropriate balance of tenure, diversity, skills and experience needed to provide effective oversight in light of the Company’s current and future strategic needs. The Company benefits when there is a mix of experienced directors with a deep understanding of the Company and newer directors who bring fresh perspectives and new ideas.
- The Board does not believe in a specific limit for the overall length of time a director may serve. Directors who have served on the Board for an extended period can provide valuable insight into the operations and future of the Company based on their experience with, and understanding of, the Company’s history, policies, and objectives..

Proportion of Independent Directors

The Board shall consist of at least a majority of directors who meet the criteria for independence required by applicable listing standards. The Board shall determine on an annual basis whether each director qualifies as an independent director pursuant to applicable listing standards. The Board also believes that the Chief Executive Officer should be a member of the Board and that it may be in the Company's best interest to have one or more former members of management serve as directors. The Board's policy is that the positions of Board Chair and Chief Executive Officer should be held by separate persons as an aid in the Board's oversight of management and to allow the Chief Executive Officer to focus primarily on management responsibilities.

Lead Independent Director

If the Board Chair is not an Independent Director, the Independent Directors shall designate a Lead Independent Director from the group of Independent Directors. In addition to the duties of a Board member, the Lead Independent Director shall be responsible for: (i) providing the Board Chair with input as to an appropriate schedule of Board meetings; (ii) providing the Board Chair with input as to the preparation of agendas for Board meetings; (iii) providing the Board Chair with input as to the quality, quantity, and timeliness of the flow of information from the Company's management that is necessary for the Independent Directors to effectively and responsibly perform their duties; (iv) making recommendations to the Board Chair regarding the retention of consultants who report directly to the Board (other than consultants who are selected by the various committees of the Board); (v) presiding over executive sessions of the Board; (vi) acting as a liaison between the Independent Directors and the Board Chair and Chief Executive Officer on sensitive issues; (vii) together with the Board Chair, leading the Board in its review of the results of the annual self-assessment process, including acting on director feedback as needed; and (viii) communicating with major stockholders, as appropriate. Subject to the Lead Independent Director's continued service on the Board, the Lead Independent Director shall serve a two-year term, or until such Lead Independent Director's resignation or the appointment by the Independent Directors of a successor, or the appointment of a Board Chair who is an Independent Director (or the determination by the Independent Directors that a serving Board Chair has qualified as an Independent Director).

Nomination of Directors

The Governance Committee is responsible for recommending individuals to present to the Board as candidates for Board membership in connection with the election of directors by stockholders and to fill Board vacancies. The Board has delegated to the Governance Committee the responsibility for the screening process for identifying possible candidates.

To ensure that the Board continues to evolve and is refreshed in a manner that serves the changing business and strategic needs of the Company, the Governance Committee annually reviews with the Board the applicable skills, qualifications, expertise and characteristics of Board nominees in the context of the current Board composition and Company circumstances. In making its recommendations to the Board, the Governance Committee considers the qualifications of each individual director candidate in light of the criteria described under "Board Member Criteria" and "Guiding Principles for Board Development and Succession" above. The Governance Committee may use a variety of sources, including executive search firms and stockholder recommendations, to identify director candidates.

For nomination of potential new candidates made other than by the Board, the stockholder or other person making such nomination must comply with the Company's Bylaws and Charter. All potential candidates must agree (i) to make themselves reasonably available for interviews with the Governance Committee and/or other directors and members of management; and (ii) to the conduct by the Company of customary background checks and other reviews of nominee qualifications.

Policy Regarding Election of Directors

The Board expects each incumbent director who is nominated for re-election to the Board to tender an irrevocable resignation from the Board prior to the corresponding annual meeting of stockholders in accordance with the Bylaws. In the event an incumbent director fails to receive the required votes for re-election, the Governance Committee, or a committee of the Board consisting solely of Independent Directors that does not include such incumbent director, will determine whether to accept such director's resignation in accordance with the Bylaws.

Accordingly, in considering whether to nominate any incumbent director for re-election, the Board shall consider whether the incumbent director has tendered an irrevocable resignation that will be effective upon (i) the failure to receive the required vote at the next meeting at which such director faces re-election and (ii) acceptance of such resignation in accordance with the Bylaws. In addition, in considering whether to nominate an individual who is not an incumbent director for election to the Board, or to fill a director vacancy or new directorship, the Board shall consider whether such individual has agreed to tender a resignation of the type described in the preceding sentence prior to being nominated for re-election, if applicable.

Changes in a Director's Status

Directors shall inform the Board Chair (or the Lead Independent Director if the Board Chair is not an Independent Director) and the Company's Secretary of any significant change in such director's personal circumstances, including a change in principal occupation, changes in professional roles and responsibilities, or status as a member of the board of any other public company, including retirement, in each case, including changes that may affect the continued appropriateness of Board or committee membership. Any Independent Director shall also inform the Board Chair (or the Lead Independent Director if the Board Chair is not an Independent Director) and the Company's Secretary of any change in circumstance that may impact such director's status as an Independent Director. The Governance Committee shall be advised of any such change described above and shall make a recommendation to the Board on the continued appropriateness of such director's Board or committee membership under these circumstances.

Outside Directorships and Positions

From time to time, members of the Board are invited to serve on boards of other public companies. Participation should be very selective. To ensure that members of the Board have the time and resources to commit to the Company's Board, it is recommended that Board members serve on four or fewer boards of publicly held companies (including the Board). Members of the Company's Board who are chief executive officers of public companies are recommended not to sit on the boards of more than three public companies (including the board of the company on which they serve as chief executive officer) . In the event a Board member holds a position on the Company's Audit, Risk and Compliance Committee (the "ARC Committee"), such member may not serve on the audit committees of boards of more than three other publicly held companies unless the Board determines that such simultaneous service would not impair the ability of the individual to effectively serve on the Company's ARC Committee. The Governance and Nominating Committee and the Board will consider the nature of and time involved in a director's service on other boards in evaluating the suitability of individual directors and making its recommendations to Company shareholders.

Members of the Board shall not serve as a director or officer of any company that may cause a significant conflict of interest with their service as a member of the Company's Board. Board members should normally avoid serving on the board, or serving as an officer, of a service provider, contractor, consultant or other party with whom the Company does a significant amount of business, particularly when such participation might create an impression of favoritism or conflict of interest. All directors shall inform the Board Chair (or the Lead Independent Director if the Board Chair is not an Independent Director) and the Company's Secretary of any activity that may be a potential conflict of interest, such as an affiliation with a material competitor or supplier of the Company. The Governance Committee shall be advised of such activity and shall make a recommendation to the Board on the continued appropriateness of such director's Board or committee membership under these circumstances. Board members will take any such action as the Governance Committee deems to be necessary or appropriate to effect the intent of this section.

BOARD OVERSIGHT

Strategic Oversight and Risk Management

One of the Board's primary responsibilities is overseeing management's establishment and execution of the Company's strategy, and at least annually, the Board conducts an in-depth review of the Company's overall strategy. The Board looks to the expertise of its committees to inform strategic oversight in their areas of focus. In addition, the Board is responsible for overall risk assessment and management oversight and executes its oversight responsibility directly and through its committees, who regularly report back to the Board.

BOARD PROCEDURES

Selection of Chief Executive Officer and Board Chair

The Board shall select and appoint the Chief Executive Officer. The Independent Directors shall designate the Board Chair.

Attendance at Board, Committee, and Annual Meetings

The Board currently has at least four regularly scheduled meetings each year, plus special meetings as required. Each Board member shall make every effort to attend each Board meeting, each meeting of a committee on which such director serves, and the annual meeting of stockholders, preferably in person but in special circumstances via telephone conference call or other electronic means.

Time Commitment and Board Service

Each Board member is expected to ensure that his or her other existing and planned future commitments do not materially interfere with such member's service on the Company's Board.

Executive Sessions among Independent Directors

At each regularly scheduled Board meeting, time will be allocated for the Independent Directors to meet in executive session without Company management present. The Board Chair (if an Independent Director) or the Lead Independent Director, as applicable, will chair these meetings.

Conflicts of Interest

- *Director Conflicts of Interest*. On an annual basis, each Board member will complete a questionnaire that is designed to assist the Board in affirmatively determining independence and identify any actual or potential conflicts of interest.
- *Senior Executive Conflicts of Interest*. On an annual basis, each executive officer of the Company will complete a questionnaire that is designed to identify any actual or potential conflicts of interest.

Auditor Independence

The Audit, Risk and Compliance Committee ("ARC Committee") is responsible for making appropriate inquiries and receiving appropriate assurances necessary to assess the independence of the Company's auditors.

Code of Business Conduct and Ethics

The ARC Committee is responsible for evaluating and, if appropriate, recommending to the Board approval of any contemplated waiver of a provision of the Company's Code of Business Conduct and Ethics involving directors and executive officers as set forth in the Code of Business Conduct and Ethics.

Availability of Outside Advisors

The Board and each of its committees may retain outside legal, financial or other advisors as the Board or such committee deems necessary or appropriate, at the Company's expense. The Board and each Committee thereof shall have the power to hire independent legal, financial or other advisors as they may deem necessary, without consulting or obtaining the approval of any officer of the Company in advance.

Access to Information and Management

The Board shall have access to information about the Company that it deems necessary or appropriate to carry out its duties, subject to reasonable efforts to avoid disruption to the Company's business and operations. This includes, among other things, access to the Company's management, employees, documents and facilities.

Board Interaction with Stakeholders

It is the Company's policy that, as a general matter, management speaks for the Company and, accordingly, directors should refer all inquiries from investors, analysts, the press or others to the Chief Executive Officer or his or her designee. Nevertheless, it is expected that Independent Directors, including the Board Chair (or the Lead Independent Director if the Board Chair is not an Independent Director), may from time to time meet or otherwise communicate with external constituents, including stockholders. Typically, those meetings or communications will be coordinated through the Chief Executive Officer or his or her designee.

Review of Governance Guidelines

The Governance Committee shall review these Guidelines at least annually and make any recommendations to the Board.

BOARD COMMITTEES

Nature of Committees

The purpose of the Board committees is to help the Board effectively and efficiently fulfill its responsibilities, although they do not displace the oversight responsibilities of the Board as a whole. Committees will regularly report the results of their significant activities to the full Board and make recommendations to the full Board as appropriate.

Number and Composition of Committees

The Company's Board currently has three principal committees: the ARC Committee; the Compensation Committee; and the Governance Committee. From time to time the Board may form a new committee or disband a current committee depending upon the circumstances. Committee composition shall conform to the requirements of the Securities and Exchange Commission, The Nasdaq Stock Market, and any other applicable rules and regulations, as such requirements may be amended from time to time. Each of the Company's ARC Committee, Governance Committee, and Compensation Committee shall consist solely of Independent Directors, except in certain limited circumstances.

Appointment and Term of Service of Committee Members

The Governance Committee shall recommend members of the Board to serve as committee members, who shall, if appointed by the Board, serve until their resignation or until the Board appoints a successor. Committee assignments are reviewed annually by the Governance Committee.

Committee Proceedings

Committee proceedings shall conform to the requirements of The Nasdaq Stock Market (or other listing standards which may be applicable) and other applicable regulations, as such requirements may be amended from time to time. Each of the Board's Committees shall be governed by a written charter approved

by the Board. All Board members are welcome to attend committee meetings, unless the meeting relates solely to a matter with respect to which a Board member has a conflict of interest. The agendas and meeting minutes of the Committees shall be shared with the full Board. Each Committee shall periodically report to the Board on significant matters discussed by such Committee.

STOCK OWNERSHIP GUIDELINES

All non-employee directors and executive officers are subject to the Company's Stock Ownership Guidelines, which are intended to further align their interests with the long-term interests of the Company's stockholders.

BOARD COMPENSATION

The Board's compensation practices and any changes to such practices shall be determined by the Compensation Committee. The Board also believes that a significant portion of director compensation should align director interests with the long-term interests of our stockholders. It is appropriate for the Compensation Committee to receive, from time to time, reports on the status of Board compensation in relation to other similarly situated U.S. companies to ensure that the Company's Board compensation is appropriate and competitive.

Director's fees, including any additional amounts paid to Board committee chairs and members, are the only compensation a member of the ARC Committee may receive from the Company; provided, however, that a member of the ARC Committee may also receive fixed amounts of compensation under a retirement plan (including deferred compensation) from the Company for prior service with the Company so long as such compensation is not contingent in any way on continued service.

DIRECTOR ORIENTATION AND CONTINUING EDUCATION

The Company's director orientation program is intended to familiarize new directors with the Company's businesses, strategies, and policies, and assist them in developing the knowledge required for their service on the Board and any committees on which they serve. All other directors are also invited to participate in the orientation program.

The Company will make available to the Company's directors regular continuing education programs that enhance the skills and knowledge directors use to perform their responsibilities. These programs may include internally developed programs, programs presented by third parties, and financial and administrative support to attend qualifying academic or other independent programs.

ANNUAL SELF-ASSESSMENT

The Governance Committee shall recommend to the Board an annual self-assessment process for the Board and each of its committees. The self-assessment process will focus on whether the Board and its members, and the members of each committee, are functioning effectively and adequately contributing to the Company. The Board Chair (or Lead Independent Director if the Board Chair is not an Independent Director) will lead the Board review and the chair of each committee will lead the committee review of the results of the annual self-assessment process.

SUCCESSION PLANNING

The Board recognizes the importance of effective executive leadership to the Company's success, and reviews executive succession planning at least annually. As part of this process, the Board reviews and discusses the capabilities of the Company's senior leadership, as well as succession planning and potential successors for the Company's executive officers (including the Chief Executive Officer). The process includes consideration of organizational and operational needs, competitive challenges, leadership/management potential and development, and emergency situations.

CONFIDENTIALITY

The proceedings and deliberations of the Board and its committees are confidential. Each director must maintain the confidentiality of information received in connection with his or her service as a director to the extent not disclosed publicly by the Company.

DEFINITIONS

Executive Officer

An "executive officer" means an individual who is deemed an executive officer as defined in Rule 3b-7 of the Securities Exchange Act of 1934, as amended.

Independent Director

An "Independent Director" means any director who satisfies the requirements of The Nasdaq Stock Market (or other listing standards which may be applicable) for independent directors, as such requirements may be amended from time to time.

Last Approved: January 26, 2022

January 22, 2023

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

 # 1 Rule 14a-8 Proposal
PayPal Holdings, Inc. (PYPL)
Adopt Majority Vote Standard for Director Elections
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the January 20, 2023 no-action request.

The key words in the resolved statement are:
"To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote."

Management claims in clear error that it implemented this proposal by allowing a director to serve for a full term when a director fails to receive a majority vote. In other words there would be no material consequences for a director to fail to receive a majority vote.

Sincerely,

John Chevedden

cc: Brian Yamasaki

[PYPL: Rule 14a-8 Proposal, November 12, 2022 | Revised December 20, 2022]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Adopt Majority Vote Standard for Director Elections

Resolved: Shareholders hereby request that our Board of Directors initiate the appropriate process as soon as possible to amend our Company's articles of incorporation and/or bylaws to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote.

In order to provide shareholders a meaningful role in director elections, our Company's current director election standard should be changed from a plurality vote standard to a majority vote standard. The majority vote standard is the most appropriate voting standard for director elections where only board nominated candidates are on the ballot.

This will establish a more meaningful vote standard for board nominees and could lead to improved performance by individual directors and the entire board. Under the current PayPal voting system, a director can be elected if the director owns only one share of PayPal stock and votes this one share for himself.

More than 77% of the companies in the S&P 500 have already adopted majority voting for uncontested elections. Our company has an opportunity to join the growing list of companies that have already adopted this standard.

Please vote yes:
Adopt Majority Vote Standard for Director Elections – Proposal 4
[The line above – *Is* for publication. Please assign the correct proposal number in the 2 places.]

January 29, 2023

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

 # 2 Rule 14a-8 Proposal
PayPal Holdings, Inc. (PYPL)
Adopt Majority Vote Standard for Director Elections
John Chevedden

Ladies and Gentlemen:

This is a counterpoint to the January 20, 2023 no-action request.

The key words in the resolved statement are:
"To allow an orderly transition a director who does not receive a majority vote shall only serve for 180-days or less after failure to receive a majority vote."

Management claims in clear error that it implemented this proposal by allowing a director to serve for a full term when a director fails to receive a majority vote. In other words there would be no material consequences for a director to fail to receive a majority vote.

Page 3 of the attachment points out exactly what this proposal is attempting to address and what the Company does not have.

Sincerely,

John Chevedden

cc: Brian Yamasaki

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The Futility of Withhold Votes

Around this time each year, activists consider what to do for next year, and this subject frequently comes up. We've heard of and talked with a few activists who want to escalate beyond angry letters, irate news releases, and aggressive precatory proposals. What about a withhold campaign?

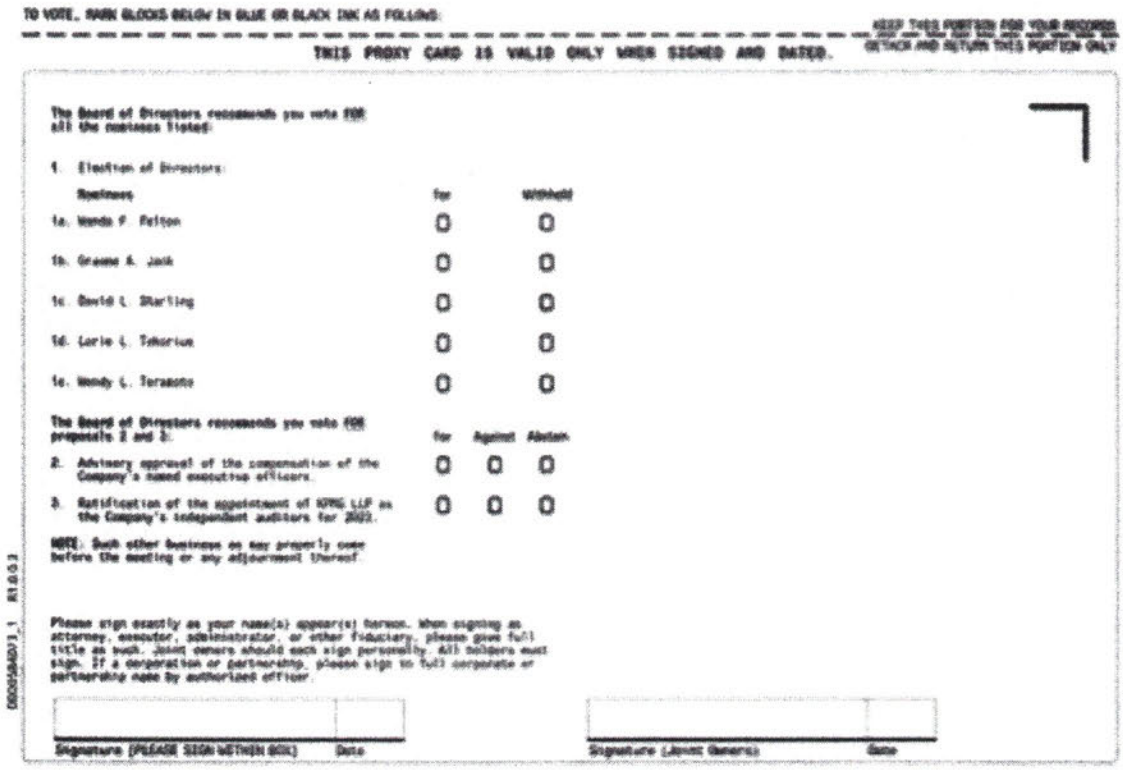
The mechanics of a withhold vote, and its cousins against and abstain votes, might seem a little complicated to all but us corp gov junkies. We can best understand how it works if we think of it partly as a procedural convenience: it helps keep a shareholder's vote straight. Still, at almost all companies it has no practical impact on the outcome of a director election.

Here we explain some of those mechanics. We also show how a withhold vote doesn't really matter, as universal proxy cards (UPC) now makes it even less relevant than before.

This discussion pertains only to uncontested director elections at companies with a majority vote standard. About half of US public companies have one of those. Votes on any other subjects, like shareholder proposals, equity plans, or auditors, don't involve withhold votes.

"Withhold" Matters Less Than "For"

For each director candidate, almost all proxy cards list at least two choices: "For" and "Withhold". Some list three: "For", "Against", and "Abstain", which for our purposes here work the same was as "For" and "Withhold". We illustrate this with a recent example, from The Greenbrier Companies (GBX):



TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

KEEP THIS PORTION FOR YOUR RECORDS

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

DETACH AND RETURN THIS PORTION ONLY

The Board of Directors recommends you vote FOR all the nominees listed:

1. Election of Directors:

Nominees	For	Withhold
1a. Wanda F. Felton	O	O
1b. Graeme A. Jack	O	O
1c. David L. Starling	O	O
1d. Lorie L. Tekorius	O	O
1e. Wendy L. Teramoto	O	O

The Board of Directors recommends you vote FOR proposals 2 and 3:

	For	Against	Abstain
2. Advisory approval of the compensation of the Company's named executive officers.	O	O	O
3. Ratification of the appointment of KPMG LLP as the Company's independent auditors for 2022.	O	O	O

NOTE: Such other business as may properly come before the meeting or any adjournment thereof.

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

Signature (PLEASE SIGN WITHIN BOX) Date

Signature (Joint Owners) Date

At this ASM, each of five candidates ran unopposed. So, five people for five BoD seats. GBX has a majority vote standard.

For each of the five, shareholders can vote "For" or "Withhold". A withhold campaign would urge shareholders to not vote "For" some or all candidates, and instead check "Withhold". What does this accomplish?

Realistically, nothing. Withhold votes seek to trigger a majority vote problem for a candidate. As we've shown before, the majority vote standard almost never serves to remove a director.

Mechanics of Withhold Votes

The "withhold" vote is in part a placeholder. It allows a shareholder to show affirmatively it opposes a given candidate. Depending on a company's bylaws, a shareholder could have the same impact if it leaves that candidate's line blank. "Withhold" just gives a shareholder something to check if it doesn't like the candidate.

At some companies, the majority vote standard means a director needs a majority of "For" votes at the ASM, relative to the total number of votes cast. So, a "Withhold" vote just helps a shareholder to not vote "For" a director. It gives them something else to check-off.

At other companies, including GBX, the majority vote standard works more strictly. A candidate that receives more "Withhold" votes than "For" votes means he or she failed to receive a majority of votes cast for that candidate. This then triggers the resignation process within the majority vote mechanics.

Sometimes, a "Withhold" vote is more than a placeholder. After all, "Withhold" means the shareholder literally declines to grant authority to the proxy holder (the company) to vote on its behalf. Suppose a shareholder leaves the director's line blank, and does not vote either "For" or "Withhold". If the company's voting rules so provide, then it will have authority to vote at its discretion. Of course, it will use that discretion to vote "For" that director. Then, a shareholder could vote "Withhold" to protest, and prevent the company from voting "For" instead. But, even if the "For" votes fall short, and the director fails to win a majority, nothing ever happens, see above...

What about companies without majority vote?
Then you're really wasting your time. For the half of US companies that don't have a majority vote standard, we can't think of any reason to run a withhold campaign. A "Withhold" vote will have literally no impact on the outcome, either mechanically or practically.

Universal proxy makes withhold even less relevant
If the voting rules allow it, then withhold votes can in principle affect the outcome of a director election, say in the GBX example. Yet, in the few times they trigger a majority vote failure, they almost never result in the director actually leaving the BoD.

So, an activist can run a withhold campaign and likely see nothing happen at the company. Or, it can nominate one or more candidates using UPC, and pressure the company seriously. A proxy contest does cost more than a withhold campaign. The SEC rule making on UPC reminds us how an activist can prosecute a proxy contest economically.

"Withhold" was a reasonable, if ineffective way for an activist to object to a company's directors. With UPC, activists now have a much better way to do that.

You can find other useful resources at the **TAI website**, including our research on "**Effective Activism**", our **white paper** with the basics on activist investing, and our guides on **exempt solicitation**, **consent solicitation**, and **special shareholder meetings**.

For further information, or to discuss a specific turnaround situation, please contact:

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