

May 12, 2006

Majority Voting and Director Qualification

As you know from our previous memos, we have been paying close attention to majority voting and related proxy issues. At this time, we are confronted with a number of developments that will have to be dealt with in the 2007 annual meeting cycle. They include:

- A continuing effort by the Carpenters Union and others to promote majority voting through 14a-8 proxy resolutions.
- The 14a-8 proxy resolution and litigation efforts by Harvard Professor Lucian Bebchuk to impose his brand of majority voting through shareholder adopted by-laws.
- The adoption by the SEC of internet proxy rules that will facilitate proxy fights by dissident shareholders and encourage withhold vote campaigns focused on a few directors and efforts to elect short slates.
- The enactment by Delaware of a proposed amendment to its corporation law that will authorize and thereby encourage adoption of majority voting by-laws.
- The adoption by the ABA Committee on Corporate Laws of revisions to the Model Business Corporations Act, which could lead states other than Delaware to amend their laws to provide for majority voting by-laws.
- The repeal by the NYSE of its rule that permits brokers to vote for directors without instructions from the brokers' clients.
- The continued support by ISS of majority voting even in situations where corporate governance principles have been amended to provide for majority voting through director resignation policies, and the blind following of the ISS recommendation by its institutional investor clients.
- The continued use of 14a-8 proxy resolutions and proxy fights by activist hedge funds seeking to impose management, strategy or structural changes to achieve short-term increases in market price of a company's stock at the expense of long-term shareholder value.

To assist companies in dealing with the situation we will be confronted with in the 2007 proxy season, we have developed a Model Majority Voting and Director Qualification By-Law designed to implement a reasonable form of majority voting while providing for protection against abuse. As with all such models, it is not universal and each company should consider tailoring it to its own situation and coordinating it with its directors questionnaire, corporate governance guidelines, nominating committee charter and form of proxy statement and proxy in order to achieve the best result.

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MODEL MAJORITY VOTING AND DIRECTOR QUALIFICATION BY-LAW

SECTION 1. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders. (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this By-Law, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this By-Law.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 1(A)(1)(c) of this By-Law, the stockholder must have given timely notice thereof in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall (a) set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (x) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (y) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (b) with respect to each nominee for election or reelection to the Board of Directors, include the questionnaire, representation and agreement required by Section 3 of this By-Law.

(3) Notwithstanding anything in the second sentence of Section 1(A)(2) of this By-Law to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the

Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this By-Law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this By-Law, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this By-Law. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by Section 1(A)(2) of this By-Law shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General. (1) Only such persons who are nominated in accordance with the procedures set forth in this By-Law shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this By-Law. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this By-Law and, if any proposed nomination or business is not in compliance with this By-Law, to declare that such defective proposal or nomination shall be disregarded.

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

(3) Notwithstanding the foregoing provisions of this By-Law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules

and regulations thereunder with respect to the matters set forth in this By-Law. Nothing in this By-Law shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

SECTION 2. Required Vote for Directors. Except as provided in this By-Law, each director shall be elected by the vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. For purposes of this By-Law, a majority of votes cast shall mean that the number of shares voted "for" a director's election exceeds the number of votes cast "against" that director's election.

If a nominee for director is not elected and the nominee is an incumbent director, the director shall promptly tender his or her resignation to the Board of Directors, subject to acceptance by the Board of Directors. The [Nominating and Corporate Governance] Committee will make a recommendation to the Board of Directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board of Directors will act on the tendered resignation, taking into account the [Nominating and Corporate Governance] Committee's recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission or other broadly disseminated means of communication) its decision regarding the tendered resignation and the rationale behind the decision within 90 days from the date of the certification of the election results. The [Nominating and Corporate Governance] Committee in making its recommendation and the Board of Directors in making its decision may each consider any factors or other information that they consider appropriate and relevant. The director who tenders his or her resignation will not participate in the recommendation of the [Nominating and Corporate Governance] Committee or the decision of the Board of Directors with respect to his or her resignation.

If a director's resignation is accepted by the Board of Directors pursuant to this By-Law, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors may fill the resulting vacancy pursuant to the provisions of Section ___ [Reference to Board of Directors vacancies provision of By-Laws/Certificate of Incorporation] or may decrease the size of the Board of Directors pursuant to the provisions of Section ___ [Reference to Board of Directors size provision of the By-Laws/Certificate of Incorporation].

SECTION 3. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 1 of this By-Law) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and any other person or entity that such person may represent (which questionnaire shall be provided by the Secretary) and a written representation and agreement (in the form provided by the Secretary) that such person (A) will abide by the requirements of Section 2 of this By-Law, (B) has no agreement or understanding with any person or entity as to how such person will act or vote on any issue or question as a director, (C) is not a party to any agreement or understanding with any person or entity other than the Corporation with respect to compensation, reimbursement or

indemnification in connection with service or action as a director, (D) owns [\$100,000] _____ shares of stock of the Corporation and will not dispose of the shares so long as such person is a director and (E) in such person's individual capacity and on behalf of any person or entity for whom such person may be a representative, has complied and will comply with all applicable corporate governance, conflicts, confidentiality and stock ownership and trading policies of the Corporation. In addition, a person shall not be eligible to be a nominee for election as a director unless that person meets the requirements for service as a director prescribed in the Corporation's [Corporate Governance Guidelines].