

June 12, 2006

Majority Voting – A Look Back at the 2006 Proxy Season

As the 2006 annual meeting cycle draws to a close, it is clear that the majority voting standard for the election of directors continues to gain momentum and will become universal. This proxy season, activist shareholders proposed a host of proxy resolutions promoting the majority voting standard. Most, but not all, of these proposals were precatory, and they were typically endorsed by ISS. Attached as Annex A to this memorandum is a partial compendium of the results of the 2006 proxy season.

The voting results have been highly dependent on whether companies already had a formal majority voting governance policy of the type first adopted by Pfizer. So far, 86% (24 out of 28) of majority voting proposals passed where a company did not already have such a policy, but only 18% (8 out of 44) of these proposals passed where a company had adopted a Pfizer-type governance policy.

No binding majority voting proposals have yet passed this season according to available information. However, some of these proposals did receive significant shareholder support. Also, this proxy season a number of companies (including Intel and Dell) voluntarily adopted by-law amendments or proposed charter amendments providing for majority voting.

This proxy season also saw binding by-law proposals from Harvard Professor Lucian Bebchuk seeking a variation of majority voting, the proposed amendment to Delaware's corporation law that would tend to encourage the adoption of majority voting by-laws and the NYSE's examination of the potential repeal of its rule that permits brokers to vote for directors in the absence of instructions from the brokers' clients.

Several conclusions can be drawn from these developments:

- Majority voting proposals will continue to figure heavily in the 2007 proxy season.
- Binding shareholder proposals are likely to increase and gain further support.
- Many companies adopting a Pfizer-type governance policy will still face shareholder proposals seeking to have majority voting embedded in their by-laws.
- Companies that refrain from embracing some form of majority voting (whether in by-laws or in a governance policy) will draw increased scrutiny from ISS and activist shareholders.

Considering this landscape, we believe that it remains advisable, at a minimum, for companies to proactively adopt a corporate governance policy along the lines of the model we have previously recommended, a revised copy of which is attached as Annex B.

We believe that companies should also seriously consider adopting a majority voting and director qualification by-law along the lines of the model we have developed, a

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revised copy of which is attached as Annex C. In addition to implementing a reasonable majority voting standard, such a by-law would promote a level playing field in proxy contests, including serving to assure that shareholders are provided all relevant information regarding director candidates and any conflicts or other special interests that could impede their ability to fulfill their fiduciary duties as directors. As with all such models, the attached governance policy and by-law forms are not “one size fits all.” Each company should tailor the applicable form to its own situation and coordinate it with its directors questionnaire, corporate governance guidelines, nominating committee charter and form of proxy statement and proxy card in order to achieve the optimal result.

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2006 PROXY SEASON SHAREHOLDER PROPOSALS – MAJORITY VOTING¹

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
Alaska Air Group, Inc.	05-16-2006	Currently unavailable	-	Company employee (not named in proxy)	Yes; also adopted majority voting by-law prior to stockholder meeting
Allied Waste Industries, Inc.	05-25-2006	Currently unavailable	-	International Brotherhood of Teamsters	No
The Allstate Corporation	05-16-2006	Did not pass	45.3%	Massachusetts Carpenters Pension Fund	Yes
American Express Co.	04-24-2006	Did not pass	32.8%	United Brotherhood of Carpenters Pension Fund	Yes
Amgen Inc.	05-10-2006	Did not pass	46.0%	International Brotherhood of Electrical Workers Pension Benefit Fund	Yes
AMR Corporation	05-17-2006	Currently unavailable	-	John Chevedden	Yes
Analog Devices, Inc.	03-14-2006	Did not pass	35.0%	United Brotherhood of Carpenters Pension Fund	Yes
Avon Products, Inc.	05-04-2006	Did not pass	29.0%	International Brotherhood of Electrical Workers Pension Benefit Fund	Yes
Bank of America Corporation	04-26-2006	Passed	56.0%	United Brotherhood of Carpenters Pension Fund	No
BJ's Wholesale Club, Inc.	05-25-2006	Currently unavailable	-	Massachusetts Carpenters Pension Fund	No
The Boeing Company	05-01-2006	Passed	57.0%	David R. Watt	No
Borders Group, Inc.	05-25-2006	Passed	59.2%	Massachusetts Carpenters Pension Fund	Yes

¹ As public filings with official voting results are not yet available in many cases, most data with respect to voting results has been gathered from secondary sources.

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
Burlington Northern Santa Fe Corporation	04-19-2006	Did not pass	38.2%	Massachusetts Laborers Pension Fund	Yes
Capital One Financial Corporation	04-27-2006	Did not pass	44.1%	United Brotherhood of Carpenters Pension Fund	Yes
Caterpillar Inc.	06-14-2006	Pending	-	Not named in proxy	No
The Charles Schwab Corporation	05-18-2006	Currently unavailable	-	Sheet Metal Workers National Pension Fund	No
The Chubb Corporation	04-25-2006	Passed	51.8%	United Brotherhood of Carpenters Pension Fund	Yes
Ciena Corporation	03-15-2006	Did not pass	31.0%	United Brotherhood of Carpenters Pension Fund	Yes
ConocoPhillips	05-10-2006	Did not pass	43.0%	United Brotherhood of Carpenters Pension Fund	Yes
CVS Corporation	05-11-2006	Passed	N/A	United Brotherhood of Carpenters Pension Fund	No
Dominion Resources, Inc.	04-28-2006	Did not pass	46.5%	United Brotherhood of Carpenters Pension Fund	Yes
Electronic Data Systems Corporation	04-18-2006	Did not pass	32.3%	John Chevedden	Yes
Eli Lilly and Company	04-24-2006	Did not pass	31.6%	United Brotherhood of Carpenters Pension Fund	Yes
EMC Corporation	05-04-2006	Passed	54.0%	Central Laborers Pension Welfare & Annuity Funds	Yes
Entergy Corporation	05-12-2006	Did not pass	44.5%	Sheet Metal Workers National Pension Fund	Yes
Exxon Mobil Corporation	05-31-2006	Passed	52.2%	William Steiner	No
Fiserv, Inc.	05-24-2006	Did not pass	49.6%	United Brotherhood of Carpenters Pension Fund	Yes
General Dynamics Corporation	05-03-2006	Did not pass	37.9%	United Brotherhood of Carpenters Pension Fund	Yes

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
General Electric Company	04-26-2006	Did not pass	19.4%	United Brotherhood of Carpenters Pension Fund	Yes; also adopted majority voting by-law prior to stockholder meeting
General Motors Corporation	06-04-2006	Passed	58.0%	John Lauve	No
Halliburton Company	05-17-2006	Passed	N/A	United Brotherhood of Carpenters Pension Fund	No
Hewlett-Packard Company	03-15-2006	Did not pass	45.1%	United Brotherhood of Carpenters Pension Fund	Yes
Hilton Hotels Corporation	05-24-2006	Did not pass	48.0%	Sheet Metal Workers National Pension Fund	Yes
The Home Depot, Inc.	05-25-2006	Passed	56.0%	United Brotherhood of Carpenters Pension Fund	No
Honeywell International Inc.	04-24-2006	Did not pass (binding proposal)	49.0%	American Federation of State, County and Municipal Employees	Yes
Host Hotels & Resorts Inc.	05-18-2006	Currently unavailable	-	Massachusetts Carpenters Pension Fund; board recommended	No
Illinois Tool Works Inc.	05-05-2006	Did not pass	38.0%	United Brotherhood of Carpenters Pension Fund	Yes
International Business Machines Corporation	04-25-2006	Did not pass	40.1%	United Brotherhood of Carpenters Pension Fund	Yes
International Paper Company	05-08-2006	Passed	66.0%	United Brotherhood of Carpenters Pension Fund	No
Johnson & Johnson	04-27-2006	Did not pass	39.0%	Sheet Metal Workers National Pension Fund	Yes
Kaman Corporation	04-18-2006	Passed	N/A	Frank Coleman Inman	No
Kimberly-Clark Corporation	04-27-2006	Passed	60.4%	United Brotherhood of Carpenters Pension Fund	No
Kohl's Corporation	04-26-2006	Passed	61.6 %	United Brotherhood of Carpenters Pension Fund	No

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
Liz Claiborne, Inc.	05-18-2006	Passed	N/A	United Brotherhood of Carpenters Pension Fund	Yes
Lowe's Companies, Inc.	05-25-2006	Currently unavailable	-	Management; proposed charter amendment	No
Mack-Cali Realty Corporation	05-24-2006	Proposal not voted on at meeting; board adopted majority vote by-law amendment immediately prior to meeting	N/A	Massachusetts Carpenters Pension Fund	Yes
Marathon Oil Corporation	04-26-2006	Passed	67.7%	United Brotherhood of Carpenters Pension Fund	No
Marriott International, Inc.	04-28-2006	Passed	95.0%	Sheet Metal Workers National Pension Fund; board recommended	No
Marsh & McLennan Companies, Inc.	05-18-2006	Did not pass	N/A	United Brotherhood of Carpenters Pension Fund	Yes
MeadWestvaco Corporation	04-25-2006	Did not pass	34.3%	United Brotherhood of Carpenters Pension Fund	Yes
Morgan Stanley	04-04-2006	Did not pass	40.0%	American Federation of State, County and Municipal Employees	Yes
NiSource Inc.	05-10-2006	Passed	66.0%	Massachusetts Laborers Pension Fund	No
Novell, Inc.	04-06-2006	Passed	62.0%	United Brotherhood of Carpenters Pension Fund	No
Nucor Corporation	05-11-2006	Did not pass	41.9%	The United Brotherhood of Carpenters Pension Fund	Yes
Occidental Petroleum Corporation	05-05-2006	Passed	56.8%	Emil Rossi	No
Office Depot, Inc.	05-12-2006	Passed	N/A	Sheet Metal Workers National Pension Fund	Yes
PACCAR Inc.	04-25-2006	Did not pass	32.1%	Sheet Metal Workers National Pension Fund	No
Peabody Energy Corporation	05-05-2006	Did not pass	45.0%	Sheet Metal Workers National Pension Fund	Yes

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
PepsiAmericas, Inc.	04-27-2006	Did not pass	27.0%	Teamsters General Fund	No
PerkinElmer, Inc.	04-25-2006	Passed	60.1%	United Brotherhood of Carpenters Pension Fund	Yes
Plum Creek Timber Company, Inc.	05-03-2006	Did not pass	28.0%	Massachusetts Carpenters Pension Fund	Yes
Post Properties, Inc.	05-18-2006	Did not pass	40.0%	Massachusetts Carpenters Pension Fund	Yes
Progress Energy, Inc.	05-10-2006	Currently unavailable	-	Management; proposed charter amendment	Yes
Pulte Homes, Inc.	05-11-2006	Did not pass	45.1%	Sheet Metal Workers National Pension Fund	Yes
Qwest Communications International Inc.	05-24-2006	Did not pass (binding proposal)	N/A	American Federation of State, County and Municipal Employees	No
Raytheon Company	05-03-2006	Passed	55.9%	United Brotherhood of Carpenters Pension Fund	Yes
Schering-Plough Corporation	05-19-2006	Did not pass	44.0%	Sheet Metal Workers National Pension Fund	Yes
Simon Property Group, Inc.	05-11-2006	Currently unavailable	-	Service Employees International Union	Yes
Sprint Nextel Corporation	04-18-2006	Passed	67.0%	AFL-CIO Reserve Fund	No
Staples, Inc.	06-06-2006	Did not pass	45.6%	Not named in proxy	Yes
The St. Paul Travelers Companies, Inc.	05-03-2006	Passed	59.0%	United Brotherhood of Carpenters Pension Fund	No
Synovus Financial Corp.	04-27-2006	Did not pass	30.0%	United Brotherhood of Carpenters Pension Fund	Yes
Teradyne, Inc.	05-25-2006	Currently unavailable	-	United Brotherhood of Carpenters Pension Fund	Yes
Textron Inc.	04-26-2006	Passed	59.0%	United Brotherhood of Carpenters Pension Fund	No
Thermo Electron Corporation	05-24-2006	Currently unavailable	-	United Brotherhood of Carpenters Pension Fund	Yes

Company Name	Date of Vote	Result of Vote	Votes in Favor	Proponent	Pfizer-type Governance Policy in Effect?
TXU Corp.	05-19-2006	Currently unavailable	-	Not named in proxy	Yes
Union Pacific Corporation	05-04-2006	Passed	53.0%	Sheet Metal Workers National Pension Fund	No
UnitedHealth Group Incorporated	05-02-2006	Did not pass	44.0%	United Brotherhood of Carpenters Pension Fund	Yes
URS Corporation	05-25-2006	Currently unavailable	-	Massachusetts Laborer's Pension Fund	No
Verizon Communications Inc.	05-04-2006	Passed	61.0%	United Brotherhood of Carpenters Pension Fund	No
Wachovia Corporation	04-18-2006	Did not pass	37.5%	Sheet Metal Workers National Pension Fund	Yes
Wal-Mart Stores, Inc.	06-02-2006	Did not pass	22.4%	United Brotherhood of Carpenters Pension Fund	No
Waste Management, Inc.	05-02-2006	Passed	66.4%	Teamsters General Fund	No
Wells Fargo & Company	04-25-2006	Did not pass (binding proposal)	39.0%	American Federation of State, County and Municipal Employees	Yes
Weyerhaeuser Company	04-20-2006	Passed	55.0%	Sheet Metal Workers National Pension Fund	No
The Williams Companies, Inc.	05-18-2006	Passed	50.4%	Sheet Metal Workers National Pension Fund	Yes
Wyeth	04-27-2006	Passed	55.0%	United Brotherhood of Carpenters Pension Fund	No
Xerox Corporation	05-24-2006	Currently unavailable	-	United Brotherhood of Carpenters Pension Fund	Yes

Summary Data

Result of Vote	Pfizer-type Governance Policy	No Pfizer-type Governance Policy	Total
Passed	8	24	32
Did not pass	36	4	40
Pending	0	1	1
Currently unavailable	8	6	14
Total	52	35	87

MODEL CORPORATE GOVERNANCE POLICY ON MAJORITY VOTING

If a nominee for director who is an incumbent director does not receive the vote of at least the majority of the votes cast at any meeting for the election of directors at which a quorum is present and no successor has been elected at such meeting, the director will promptly tender his or her resignation to the Board of Directors. For purposes of this corporate governance policy, a majority of votes cast means that the number of shares voted “for” a director’s election exceeds 50% of the number of votes cast with respect to that director’s election or, in the case where the number of nominees exceeds the number of directors to be elected, cast with respect to election of directors generally. Votes cast include votes to withhold authority in each case and exclude abstentions with respect to that director’s election, or, in the case where the number of nominees exceeds the number of directors to be elected, abstentions with respect to election of directors generally.

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 it considers 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 such incumbent director’s resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier resignation or removal.

If a director’s resignation is accepted by the Board of Directors, 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 __ [Reference to Board of Directors vacancies provision of the 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].

This corporate governance policy will be summarized or included in each proxy statement relating to an election of directors of the Corporation.

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 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 (i) was a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the annual meeting, (ii) is entitled to vote at the meeting and (iii) 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 earlier than the close of business on the 120th day and not later than the close of business on the 90th 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 and 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. To be in proper form, a stockholder's notice to the Secretary must: (a) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) the class or series and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner, if any, as of the date of such notice (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the "Exchange Act"); (b) if the notice relates to any business other than the nomination of a director that the stockholder proposes to bring before the meeting, set forth (i) 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 of such stockholder and beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such

stockholder; (c) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection as a director (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) 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 such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (d) with respect to each nominee for election or reelection to the Board of Directors, include the completed and signed questionnaire, representation and agreement required by Section 3 of this By-Law. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(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 100 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 (i) is a stockholder of record at the time of giving of notice provided for in this By-Law and at the time of the special meeting, (ii) is entitled to vote at the meeting and (iii) 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

(including the completed and signed questionnaire, representation and agreement required by Section 3 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 and 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 if and to the extent provided for under law, the Certificate of Incorporation or these By-Laws.

SECTION 2. Required Vote for Directors.

(A) Majority Vote. Each director to be elected by stockholders shall be elected by the vote of the majority of the votes cast 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 50% of the number of votes cast with respect to that director's election or, in the case where the number of nominees exceeds the number of directors to be elected, cast with respect to election of directors generally. Votes cast shall include votes to withhold authority in each case and exclude abstentions with respect to that director's election, or, in the case where the number of nominees exceeds the number of directors to be elected, abstentions with respect to election of directors generally.

(B) Resignation. If a nominee for director who is an incumbent director is not elected and no successor has been elected at such meeting, the director shall promptly tender his

or her resignation to the Board of Directors. The [Nominating and Corporate Governance] Committee shall 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 shall 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 it considers appropriate and relevant. The director who tenders his or her resignation shall 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 such incumbent director's resignation is not accepted by the Board of Directors, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier resignation or removal. 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, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Section __ [Reference to Board of Directors vacancies provision of the 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 the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) will abide by the requirements of Section 2 of this By-Law, (B) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (D) beneficially owns, or agrees to purchase within 90 days if elected as a director of the Corporation, not less than [] shares of stock of the Corporation ("Qualifying Shares") (subject to adjustment for any stock splits or stock dividends occurring after [date of adoption]), will not dispose of such minimum number of shares so long as such person is a director, and has disclosed therein whether all or any portion of the Qualifying Shares were purchased with any financial assistance provided by any other person and whether any other person has any interest

in the Qualifying Shares, and (E) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.