



DIVISION OF  
CORPORATION FINANCE

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

March 10, 2026

Lillian Brown  
Wilmer Cutler Pickering Hale and Dorr LLP

Re: Skyworks Solutions, Inc. (the "Company")  
Incoming Letter dated January 13, 2026  
Supplemental Correspondence dated February 24, 2026

Dear Lillian Brown:

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 Company represents that it has a reasonable basis to exclude the Proposal. Based solely on that representation, we will not object if the Company excludes the Proposal from its proxy materials.

Copies of all of the correspondence on which this response is based will be made available on our website.

Sincerely,

Division of Corporation Finance  
Office of Chief Counsel

cc: John Chevedden

**Lillian Brown**

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lillian.brown@wilmerhale.com

January 13, 2026

**Via Online Shareholder Proposal Form**

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

**Re: Skyworks Solutions, Inc.  
Exclusion of Stockholder Proposal by John Chevedden**

Ladies and Gentlemen:

We are writing on behalf of our client, Skyworks Solutions, Inc. (the “Company”), to provide notice in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2026 annual meeting of stockholders (the “Proxy Materials”), the enclosed stockholder proposal and supporting statement (collectively, the “Proposal”) submitted by John Chevedden (the “Proponent”).

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the U.S. Securities and Exchange Commission (the “Commission”) this letter and the Proposal (attached as Exhibit A to this letter) and is concurrently sending a copy to the Proponent.

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## **Proposal**

On October 26, 2025, the Company received a proposal from the Proponent, which proposal was subsequently revised on November 11, 2025. The Proposal, as revised on November 11, 2025, states in relevant part as follows:

Shareholders request that the Board of Directors take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.

## **Background**

The Company's Restated Certificate of Incorporation, as amended (the "Certificate"), currently contains certain supermajority voting provisions as noted below. The Company's Fourth Amended and Restated By-laws do not contain any additional supermajority provisions.

On or about February 11, 2026, the Company's Board of Directors (the "Board") is expected to approve amendments to the Certificate (the "Certificate Amendments") that would substantially implement the Proposal. Specifically, the Board is expected to approve amendments implicating Article Seventh, Article Tenth, Article Eleventh, Article Twelfth and Article Thirteenth of the Certificate to eliminate and replace each supermajority voting requirement included therein with a requirement for the affirmative vote of the holders of at least a majority of the shares of all classes of Company stock entitled to vote for the election of directors, considered as one class of stock.

Because the Certificate Amendments require stockholder approval to become effective, when the Board takes action to approve the Certificate Amendments, the Board is expected to concurrently approve the inclusion in the Proxy Materials of a proposal or proposals seeking stockholder approval of the Certificate Amendments (the "Company Proposals"). The Board is expected to recommend that stockholders vote "for" the Certificate Amendments. If the Certificate Amendments receive the requisite stockholder approval, the supermajority voting requirements in the Certificate will be removed.

By the time the Proxy Materials are filed, the Board will have approved the Certificate Amendments and the inclusion of the Company Proposals in the Proxy Materials. The Company plans to include the Company Proposals in the Proxy Materials and recommend approval of such proposals. The Company also intends to hire a proxy solicitor in connection with the Company Proposals. We are submitting this letter before the approval of the Certificate Amendments and

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the inclusion of the Company Proposals in the Proxy Materials to address the timing requirements of Rule 14a-8(j). Once formal action has been taken by the Board to adopt the Certificate Amendments and approve the inclusion of the Company Proposals in the Proxy Materials, the Company will notify the staff of the Commission's Division of Corporation Finance (the "Staff") that these actions have been taken (the "Supplemental Notice"). In accordance with the Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season released by the Staff on November 17, 2025, the Company expects to represent without qualification in the Supplemental Notice that it has a reasonable basis to exclude the Proposal based on the provisions of Rule 14a-8 of the Exchange Act, prior published Staff no-action letters and other Staff guidance and/or judicial decisions. Based on this representation, the Company plans to request in the Supplemental Notice that the Staff respond with a letter indicating that the Staff will not object to the Company's omission of the Proposal from the Proxy Materials.

### **Basis for Exclusion**

***The Proposal may be excluded pursuant to Rule 14a-8(i)(10) because the Company will have substantially implemented the Proposal before it files the Proxy Materials.***

The purpose of the exclusion provided under Rule 14a-8(i)(10) is to "avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management." Commission Release No. 34-12598 (July 7, 1976). While the exclusion was originally interpreted to allow exclusion of a stockholder proposal only when the proposal was "'fully' effected" by the company, the Commission has revised its approach to the exclusion over time to allow for exclusion of proposals that have been "substantially implemented." Commission Release No. 34-20091 (August 16, 1983) and Commission Release No. 34-40018 (May 21, 1998). In applying this standard, the Staff has noted that "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (March 6, 1991, *recon. granted* March 28, 1991). In addition, when a company can demonstrate that it already has taken actions that address the "essential objective" of a stockholder proposal, the Staff has concurred that the proposal has been substantially implemented and may be excluded as moot, even where the company's actions do not precisely mirror the terms of the stockholder proposal. *See, e.g., Delta Air Lines, Inc.* (March 12, 2018); *Assembly Biosciences, Inc.* (February 26, 2018); and *JetBlue Airways Corporation* (January 23, 2018) (each concurring in exclusion under Rule 14a-8(i)(10) of a proposal requesting adoption of proxy access bylaws where the bylaws adopted by the company differed from the terms requested in the proposal).

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The Staff has historically concurred in the exclusion of proposals under Rule 14a-8(i)(10) where the proposals sought the elimination of provisions requiring “a greater than simple majority vote” and the company replaced a supermajority voting requirement with, or retained an existing voting requirement of, a majority of outstanding shares standard. Most recently, the Staff explicitly stated its view that “simple majority vote” proposals, like the Proposal, focus on the elimination of supermajority voting provisions such that the adoption of a majority of outstanding shares standard, though not the exact voting standard specified in the proposal, is sufficient to substantially implement the proposal. *See Public Service Enterprise Group Inc.* (March 10, 2025).<sup>1</sup> *See also OGE Energy Corp.* (March 21, 2025) (concurring in exclusion of a similar proposal where the board of directors had approved amendments to the company’s governing documents to replace supermajority voting provisions in favor of a majority voting standard); *NRG Energy, Inc.* (March 18, 2025) (concurring in exclusion of a similar proposal where the board of directors had approved amendments to the company’s charter to replace supermajority voting provisions with a majority of outstanding shares standard); *Eli Lilly and Company* (March 17, 2025) (concurring in exclusion of a similar proposal where the board of directors had approved the adoption of amendments to the company’s charter and bylaws to replace all supermajority voting provisions with a majority of the votes cast standard or a majority of outstanding shares standard); *The Cooper Companies, Inc.* (February 12, 2025) (concurring in exclusion of a similar proposal where the company retained in its governing documents a majority of outstanding shares standard for certain actions); and *AECOM, Inc.* (January 4, 2024) (concurring in exclusion of a similar proposal where the company characterized its bylaws’ generally applicable shareholder voting standard, which was a majority of shares present, as already satisfying the “essential objectives” of the proposal); *see also The Southern Company* (March 13, 2019); *AbbVie Inc.* (February 27, 2019); *Korn/Ferry International* (July 6, 2017); *The Southern Company* (February 24, 2017); *The Brink’s Company* (February 5, 2015); *Visa Inc.* (November 14, 2014); *Medtronic, Inc.* (June 13, 2013); and *McKesson Corp.* (April 8, 2011) (each concurring in exclusion of a proposal where the board of directors approved amendments to the company’s governing documents to replace the supermajority voting provisions with a majority voting standard).

The Staff also has consistently concurred in the exclusion of proposals under Rule 14a-8(i)(10) in circumstances where a company notifies the Staff that it intends to exclude a stockholder proposal on the basis that the board of directors is expected to take action that will substantially implement the proposal, and the company follows its initial submission with a supplemental notification to the Staff confirming that such action had been taken, including in the context of requests to eliminate supermajority voting requirements. *See, e.g., OGE Energy Corp.* (March 21, 2025); *NRG Energy, Inc.* (March 18, 2025); *Public Service Enterprise Group Inc.* (March 10,

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<sup>1</sup> This clarification follows, and we understand supersedes, certain inconsistent no-action responses. *See, e.g., Fastenal Company* (February 26, 2024); *Rite Aid Corporation* (May 3, 2022); and *Fortive Corporation* (April 11, 2022).

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2025); *PulteGroup Inc.* (March 19, 2024); *CDW Corporation* (March 22, 2021); *Best Buy Co., Inc.* (March 27, 2020); *Fortive Corporation* (February 12, 2020); *State Street Corporation* (March 5, 2018); and *The Southern Company* (February 24, 2017). Consistent with this precedent, and as previously noted, the Company will provide the Staff with the Supplemental Notice once formal action has been taken by the Board to adopt the Certificate Amendments and the Company Proposals for which the Company will be seeking stockholder approval.

As set out above, the Proposal requests that the “Board of Directors take each step necessary so that each voting requirement in [the Company’s] charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.” The Proposal’s primary focus and essential objective is the removal of supermajority voting provisions. The Certificate Amendments would replace the voting requirements in the Certificate that call for a supermajority vote with a lower majority voting standard consistent with applicable law, as set out in the Proposal, thus both satisfying the Proposal’s essential objective and comparing favorably with the Proposal’s guidelines.

Consistent with the precedent cited above, the Company believes that it will have substantially implemented the Proposal before it files its Proxy Materials. In this regard, the Certificate Amendments compare favorably with the guidelines of the Proposal and satisfy its essential objective notwithstanding that the Company’s planned actions do not precisely mirror the Proposal’s terms. Because the Certificate Amendments require stockholder approval, once the Board approves the inclusion of the Company Proposals in the Proxy Materials and the Company Proposals are included in the Proxy Materials for stockholder consideration, the Board will have taken all steps necessary and within its power and will have substantially implemented the Proposal.

## **Conclusion**

For the foregoing reasons, the Company intends to exclude the Proposal from the Proxy Materials.

January 13, 2026

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If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,

A handwritten signature in cursive script, appearing to read "Lillian Brown".

Lillian Brown

Enclosures

cc: Robert Terry, Senior Vice President, General Counsel and Secretary  
Ashran Jen, Vice President, Associate General Counsel & Assistant Secretary  
Skyworks Solutions, Inc.

John Chevedden

**EXHIBIT A**

[SWKS: Rule 14a-8 Proposal, October 26, 2025, Revised November 11, 2025]

[This line and any line above it – *Not* for publication.]

**Proposal 4 – Govern by Majority Vote**

Shareholders request that the Board of Directors take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.

This means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes that Skyworks Solutions shall state in its governing documents that it shall not have any super-majority voting standards, which includes default super-majority voting standards, upon adoption of this proposal.

This unified and comprehensive proposal includes adjourning the SWKS annual meeting, if SWKS fails to obtain the required 80% vote on the day of the annual meeting, for up to 2-weeks to seek more votes with the objective of reaching the 80% shareholder approval requirement for this proposal. In 2024 SWKS demonstrated that without adjourning the SWKS annual meeting SWKS is unable to obtain the 80% approval vote from all shares outstanding that is required.

This unified and comprehensive proposal is similar to a unified and comprehensive proposal that was submitted to Netflix and received 83% shareholder support.

This proposal does not preclude SWKS from using other methods to increase shareholder voting until the 80% shareholder approval is obtained.

If SWKS had followed this proposal at its 2024 annual meeting SWKS would now be governed by a majority vote standard. The 2024 majority vote proposal needed an approval vote from 80% of SWKS shares outstanding and came so close with more than 75% approval from all shares outstanding. SWKS failed to disclose any special effort that it made in 2024 to obtain the few extra votes needed.

SWKS deserves to be condemned for not putting forth an extra effort to obtain the needed 80% approval from all shares outstanding in 2024. In a whole year SWKS typically only puts forth 3 items for shareholder vote. Thus when shareholders give overwhelming approval for one other item in a year SWKS should take this approval vote seriously and make an extra effort to turn shareholder proposal approval into proposal adoption.

Shareholders are willing to pay a premium for shares of companies that have excellent corporate governance. The supermajority voting requirements, like those of SWKS, have been found to be one of 6 entrenching mechanisms that are negatively related to company performance according to “What Matters in Corporate Governance” by Lucien Bebchuk, Alma Cohen and Allen Ferrell of the Harvard Law School.

Please vote yes:

**Govern by Majority Vote – Proposal 4**

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

JOHN CHEVEDDEN

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January 14, 2026

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

**# 1 Rule 14a-8 Proposal**  
**Skyworks Solutions Inc. (SWKS)**  
**Simple Majority Vote**  
**“Implementation” by Sham Vote**  
**January 13, 2025 j-Notice**  
**974911**

Ladies and Gentlemen:

SWKS incorrectly claims it has implemented this proposal by scheduling another guaranteed to fail vote on a proposal topic that requires 80% approval from all SWKS shares outstanding.

SWKS has had at least 10-years of premeditation for its 2026 plan, involving a \$1.6 Billion law firm, to have another failed vote on this important proposal topic that received more than 99% of the for and against votes at the 2024 SWKS annual meeting – but needed 80% approval based on all SWKS shares outstanding.

SWKS has failed 4-consecutive times since 2015 to obtain the required 80% vote based on all shares outstanding.

This 2026 j-Notice gives absolutely no reason to expect any different outcome. SWKS failed to cite any reason to expect more SWKS shareholders to cast ballots in 2026. SWKS failed to cite any extra 2026 SWKS effort to encourage more shareholders to vote.

SWKS failed to address the following 5-lines of the 2026 proposal that are intended to at least bring SWKS closer to the 80%-approval of all shares outstanding:

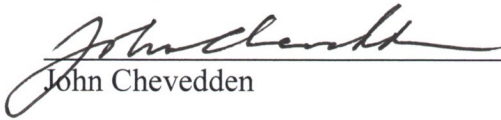
“This unified and comprehensive proposal includes adjourning the SWKS annual meeting, if SWKS fails to obtain the required 80% vote on the day of the annual meeting, for up to 2-weeks to seek more votes with the objective of reaching the 80% shareholder approval requirement for this proposal. In 2024 SWKS demonstrated that without adjourning the SWKS annual meeting SWKS is unable to obtain the 80% approval vote from all shares outstanding that is required.”

SWKS failed to cite any purported precedent that involved text similar to these 5-lines.

For 10-years SWKS has subjected its shareholders to sham votes on this important topic. In 2026 SWKS doubles down on its resistance to a successful vote on this topic supported by

99% of SWKS shareholders. In 2026 SWKS takes a further step backwards in having SWKS shareholders foot the bill for a \$1.6 Billion law firm in the premeditated SWKS quest for another sham shareholder vote on this important topic.

Sincerely,

  
John Chevedden

cc: Robert Terry

[SWKS: Rule 14a-8 Proposal, October 26, 2025]  
[This line and any line above it – *Not* for publication.]

**Proposal 4 – Govern by Majority Vote**

Shareholders request that the Board of Directors take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against applicable proposals, or a simple majority in compliance with applicable laws.

This means the closest standard to a majority of the votes cast for and against such proposals consistent with applicable laws. This proposal includes that Skyworks Solutions shall state in its governing documents that it shall not have any super-majority voting standards, which includes default super-majority voting standards, upon adoption of this proposal.

This unified and comprehensive proposal includes adjourning the SWKS annual meeting, if SWKS fails to obtain the required 80% vote on the day of the annual meeting, for up to 2-weeks to seek more votes with the objective of reaching the 80% shareholder approval requirement for this proposal. In 2024 SWKS demonstrated that without adjourning the SWKS annual meeting SWKS is unable to obtain the 80% approval vote from all shares outstanding that is required.

This unified and comprehensive proposal is similar to a unified and comprehensive proposal that was submitted to Netflix and received 83% shareholder support.

This proposal does not preclude SWKS from using other methods to increase shareholder voting until the 80% shareholder approval is obtained.

If SWKS had followed this proposal at its 2024 annual meeting SWKS would now be governed by a majority vote standard. The 2024 majority vote proposal needed an approval vote from 80% of SWKS shares outstanding and came so close with more than 75% approval from all shares outstanding. SWKS failed to disclose any special effort that it made in 2024 to obtain the few extra votes needed.

SWKS deserves to be condemned for not putting forth an extra effort to obtain the needed 80% approval from all shares outstanding in 2024. In a whole year SWKS typically only puts forth 3 items for shareholder vote. Thus when shareholders give overwhelming approval for one other item in a year SWKS should take this approval vote seriously and make an extra effort to turn shareholder proposal approval into proposal adoption.

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

This proposal topic won from 74% to 88% support at Weyerhaeuser, Alcoa, Waste Management, Goldman Sachs, FirstEnergy and Macy’s. These votes would have been higher than 74% to 88% if retail shareholders had access to independent proxy voting advice.

Please vote yes:

**Govern by Majority Vote – Proposal 4**

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

Lillian Brown

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lillian.brown@wilmerhale.com

February 24, 2026

**Via Online Shareholder Proposal Form**

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

**Re: Skyworks Solutions, Inc.  
Exclusion of Stockholder Proposal by John Chevedden**

Ladies and Gentlemen:

We are writing to supplement our January 13, 2026 letter (the “Initial Notice”) providing notice in accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) to the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) of the intention of Skyworks Solutions, Inc. (the “Company”) to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2026 annual meeting of stockholders (the “Proxy Materials”), the stockholder proposal and supporting statement (collectively, the “Proposal”) submitted by John Chevedden (the “Proponent”). Capitalized terms used but not defined in this supplemental letter shall have the meanings provided in the Initial Notice. In accordance with Exchange Act Rule 14a-8(j), a copy of this supplemental letter is being sent to the Proponent.

In the Initial Notice, we outlined the basis for exclusion of the Proposal from the Proxy Materials in reliance upon Rule 14a-8(i)(10) and noted that the Board was expected to (i) approve amendments to the Company’s Restated Certificate of Incorporation, as amended, that would replace supermajority voting provisions with a requirement for the affirmative vote of the holders of at least a majority of the shares of all classes of Company stock entitled to vote for the election of directors, considered as one class of stock (the “Certificate Amendments”) and (ii) concurrently approve, because the Certificate Amendments require stockholder approval to become effective, the inclusion in the Proxy Materials of (x) a proposal or proposals seeking stockholder approval of the Certificate Amendments (the “Company Proposals”) and (y) a favorable Board recommendation for the Company Proposals (the “Board Recommendation”). In the Initial Notice, which we incorporate by reference herein, we advised the Staff that the Company would notify the Staff by a supplemental letter of the Board’s actions in this regard.

February 24, 2026

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We write to confirm that, at a meeting held on February 11, 2026, the Board approved the Certificate Amendments. A copy of the Certificate Amendments is attached to this letter as Exhibit A. During the February 11, 2026 meeting, the Board also concurrently approved inclusion of the Company Proposals and the Board Recommendation in the Proxy Materials.

Following the Company's actions described above and as outlined in the Statement Regarding the Division of Corporation Finance's Role in the Exchange Act Rule 14a-8 Process for the Current Proxy Season released by the Staff on November 17, 2025, the Company respectfully requests that the Staff respond with a letter indicating that the Staff will not object to the Company's omission of the Proposal from the Proxy Materials. In this regard, the Company represents without qualification that it has a reasonable basis to exclude the Proposal based on the provisions of Exchange Act Rule 14a-8, prior published Staff no-action letters and other Staff guidance and/or judicial decisions.

**Conclusion**

For the reasons set forth above and in the Initial Notice, the Company intends to exclude the Proposal from the Proxy Materials. If the Staff has any questions with respect to the foregoing, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Exchange Act Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,



Lillian Brown

Enclosures

cc: Robert Terry, Senior Vice President, General Counsel and Secretary  
Ashran Jen, Vice President, Associate General Counsel & Assistant Secretary  
Skyworks Solutions, Inc.

John Chevedden

**EXHIBIT A**

# PROVISIONS OF CHARTER SUBJECT TO POTENTIAL AMENDMENT

The following provisions of our Charter are those implicated by Proposals 4-7. In this *Appendix A*, deletions and additions that would be effected by the proposed amendments are indicated by strikethroughs and underlining, respectively:

## **SEVENTH:**

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).
2. Except as otherwise provided by law and except as hereinafter otherwise provided for filling vacancies, the directors of the Corporation shall be elected at each annual meeting of stockholders. Each director so elected shall hold office until the annual meeting of stockholders following the annual meeting at which such director was elected and until a successor is duly elected and qualified, or until such director's earlier death, resignation or removal. The terms of office of each director serving the Corporation as of immediately prior to the effectiveness of the filing of this Certificate of Amendment under the General Corporation Law of the State of Delaware (the "Effective Time") whose term of office did not expire at the 2011 annual meeting of stockholders of the Corporation shall nonetheless expire at the Effective Time, such that the directors elected at the 2011 annual meeting of stockholders of the Corporation effective upon the Effective Time to succeed such directors shall commence their term of office at the Effective Time, for a term expiring at the next annual meeting of stockholders, with each such director to hold office until his or her successor shall have been duly elected and qualified.
3. Vacancies resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority vote of the directors then in office, though less than a quorum, or by a sole remaining director and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders to occur following their election. No decrease in the number of authorized directors shall shorten the term of any incumbent director.
4. Subject to the rights of the holders of any series of Preferred Stock or any other series or class of stock, as provided herein or in any Preferred Stock Designation, to elect additional directors under specific circumstances, any director may be removed from office at any time, with or without cause by the affirmative vote of the holders of at least a majority of the shares of all classes of stock of the Corporation entitled to vote for the election of directors, considered for the purposes of this Article Seventh as one class of stock.
5. No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. No repeal or modification of this paragraph, directly or by adoption of an inconsistent provision

of this Certificate of Incorporation, by the stockholders of the Corporation shall be effective with respect to any cause of action, suit, claim or other matter that, but for this paragraph, would accrue or arise prior to such repeal or modification.

## TENTH:

1. **Amendment of Certificate of Incorporation.** The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner hereafter set forth, and all rights conferred upon stockholders herein are granted subject to this reservation.

- A. Except as provided in paragraphs 1(B) and (2) of this Article Tenth and in Article Eleventh, any provision of this Certificate of Incorporation may be amended, altered, changed or repealed in the manner now or hereafter prescribed by the statutes of the State of Delaware.
- B. Notwithstanding any of the provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of holders of any particular class or series of stock of the Corporation required by law or this Certificate of Incorporation, the affirmative vote of the holders of at least the following percentages of the shares of all classes of stock of the Corporation entitled to vote for the election of directors, considered for this purpose as one class of stock, shall be required to amend, alter, change or repeal, or to adopt any provisions inconsistent with, the indicated provisions of this Certificate of Incorporation:
  - (i) ~~80%~~<sup>(1)</sup> in the case of Article Seventh ~~and~~<sup>(2)</sup> in the case of Article Thirteenth; and
  - (ii) ~~90%~~<sup>(3)</sup> in the case of Article Twelfth.

The foregoing paragraphs 1(B)(i) and (ii) of this Article Tenth may not be amended so as to alter the stockholder vote required by either such paragraph or to adopt any provisions inconsistent with these provisions, except by an amendment that is itself approved by the affirmative vote of the holders of at least the percentage of all shares of all classes of stock of the Corporation as is required to amend the provision or provisions of this Certificate of Incorporation to which such amendment relates.

2. **By-Laws.** The Board of Directors is expressly authorized to adopt, alter, amend and repeal the By-laws of the Corporation, in any manner not inconsistent with the laws of the State of Delaware or of the Certificate of Incorporation of the Corporation, subject to the power of the holders of capital stock of the Corporation to adopt, alter or repeal the By-laws made by the Board of Directors; provided, that any such adoption, amendment or repeal by stockholders shall require the affirmative vote of the holders of at least a majority of the shares of all classes of stock of the Corporation entitled to vote for the election of directors, considered for this purpose as one class of stock. This paragraph 2 of Article Tenth may not be amended so as to alter the stockholder vote specified hereby, nor may any provisions inconsistent with these provisions be adopted, except by an amendment that is itself approved by the affirmative vote of the holders of at least a majority of the shares of all classes of stock of the Corporation entitled to vote for the election of directors, considered for this purpose as one class of stock.

## ELEVENTH:

1. Except as set forth in paragraph 2 of this Article Eleventh, the affirmative vote or consent of the holders of ~~80%~~at least a majority of the shares of all classes of stock of the Corporation entitled to vote

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<sup>(1)</sup> If Proposal 6 is approved, insert "a majority"; otherwise retain current threshold of 80%.

<sup>(2)</sup> If Proposal 7 is approved, insert "a majority"; otherwise retain current threshold of 80%.

<sup>(3)</sup> If Proposal 5 is approved, insert "a majority"; otherwise retain current threshold of 90%.

for the election of directors, considered for the purposes of this Article as one class, shall be required (a) for the adoption of any agreement for the merger or consolidation of the Corporation with or into any Other Corporation (as hereinafter defined), or (b) to authorize any sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the assets of the Corporation or any Subsidiary (as hereinafter defined) to any Other Corporation, or (c) to authorize the issuance or transfer by the Corporation of any Substantial Amount (as hereinafter defined) of securities of the Corporation in exchange for the securities or assets of any Other Corporation. Such affirmative vote or consent shall be in addition to the vote or consent of the holders of the stock of the Corporation otherwise required by law, the Certificate of Incorporation of the Corporation or any agreement or contract to which the Corporation is a party.

2. The provisions of paragraph 1 of this Article Eleventh shall not be applicable to any transaction described therein if such transaction is approved by resolution of the Board of Directors of the Corporation; provided that a majority of the members of the Board of Directors voting for the approval of such transaction were duly elected and acting members of the Board of Directors prior to the time any such Other Corporation may have become a Beneficial Owner (as hereinafter defined) of 5% or more of the shares of stock of the Corporation entitled to vote for the election of directors.

3. For the purposes of paragraph 2 of this Article, the Board of Directors shall have the power and duty to determine for the purposes of this Article Eleventh, on the basis of information known to such Board, if and when any Other Corporation is the Beneficial Owner of 5% or more of the outstanding shares of stock of the Corporation entitled to vote for the election of directors. Any such determination shall be conclusive and binding for all purposes of this Article Eleventh.

4. As used in this Article Eleventh, the following terms shall have the meanings indicated:

“Other Corporation” means any person, firm, corporation or other entity, other than a subsidiary of the Corporation.

“Subsidiary” means any corporation in which the Corporation owns, directly or indirectly, more than 50% of the voting securities.

“Substantial Amount” means any securities of the Corporation having a then fair market value of more than \$500,000.

An Other Corporation (as defined above) shall be deemed to be the “Beneficial Owner” of stock if such Other Corporation or any “affiliate” or “associate” of such Other Corporation (as those terms are defined in Rule 12b-2 promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78 aaa et seq.), as amended from time to time), directly or indirectly, controls the voting of such stock or has any options, warrants, conversion or other rights to acquire such stock.

5. This Article Eleventh may not be amended, revised or revoked, in whole or in part, except by the affirmative vote or consent of the holders of ~~80%~~ at least a majority of the shares of all classes of stock of the Corporation entitled to vote for the election of directors, considered for the purposes of this Article Eleventh as one class of stock.

## **TWELFTH:**

1. The following definitions shall apply for the purpose of this Article Twelfth only:

A. “Announcement Date” shall mean the date of first public announcement of the proposal of a Business Combination.

- B. "Business Combination" shall mean:
- (i) any merger or consolidation of the Corporation or any Subsidiary with (a) any Related Person, or (b) any other corporation (whether or not itself a Related Person) which is, or after such merger or consolidation would be, an Affiliate of a Related Person; or
  - (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Related Person or any Affiliate of any Related Person of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value of \$500,000 or more; or
  - (iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Related Person or any Affiliate of any Related Person in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$500,000 or more; or
  - (iv) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Related Person or any Affiliate of any Related Person; or
  - (v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving the Related Person) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Related Person or any Affiliate of any Related Person.
- C. "Consideration Received" shall mean the amount of cash and the Fair Market Value, as of the Consummation Date, of consideration other than cash received by the stockholder. In the event of any Business Combination in which the Corporation survives, the consideration other than cash shall include shares of any class of outstanding Voting Stock retained by the holders of such shares.
- D. "Consummation Date" shall mean the date upon which the Business Combination is consummated.
- E. "Continuing Director" shall mean any member of the Board of Directors of the Corporation who is unaffiliated with the Related Person and who was a member of the Board of Directors prior to the time that the Related Person became a Related Person, and any successor of a Continuing Director who is unaffiliated with the Related Person and is recommended to succeed a Continuing Director by a majority of the Continuing Directors then on the Board of Directors.
- F. "Determination Date" shall mean the date upon which a Related Person became a Related Person.
- G. "Exchange Act" shall mean the Securities Exchange Act of 1934 as in effect on May 1, 1983.
- H. "Fair Market Value" shall mean: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the

National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use or, if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board of Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board of Directors in good faith.

- I. "Related Person" shall mean any individual, firm, corporation or other entity (other than the Corporation or any Subsidiary) which, together with its Affiliates and Associates (as such terms are defined in Rule 12b-2 under the Exchange Act) and with any other individual, firm, corporation or other entity (other than the Corporation or any Subsidiary) with which it or they have any agreement, arrangement or understanding with respect to acquiring, holding or disposing of Voting Stock, beneficially owns (as defined in Rule 13d-3 of the Exchange Act, except that such term shall include any Voting Stock which such person has the right to acquire, whether or not such right may be exercised within 60 days), directly or indirectly, more than twenty percent of the voting power of the outstanding Voting Stock.
- J. "Subsidiary" shall mean any corporation in which a majority of the capital stock entitled to vote generally in the election of directors is owned, directly or indirectly, by the Corporation.
- K. "Voting Stock" shall mean all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors.

2. In addition to the affirmative vote otherwise required by law or any provision of this Certificate of Incorporation (including without limitation Article Eleventh), except as otherwise provided in paragraph 3, any Business Combination shall require the affirmative vote of the holders of ~~90%~~at least a majority of all Voting Stock, voting together as a single class.

Such affirmative vote shall be required notwithstanding any other provision of this Certificate of Incorporation or any provision of law or of any agreement with any national securities exchange which might otherwise permit a lesser vote or no vote, and such affirmative vote shall be required in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law or by this Certificate of Incorporation.

3. The provisions of paragraph 2 of this Article Twelfth shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law, any other provision of this Certificate of Incorporation (including Article Eleventh), or any agreement with any national securities exchange, if, in the case of a Business Combination that does not involve any Consideration Received by the stockholders of the Corporation, solely in their respective capacities as stockholders of the Corporation, the condition specified in the following paragraph A is met, or, in the case of any other Business Combination, the conditions specified in either of the following paragraphs A and B are met:

- A. The Business Combination shall have been approved by a majority of the Continuing Directors, it being understood that this condition shall not be capable of satisfaction unless there is at least one Continuing Director.
- B. All of the following conditions shall have been met:
  - (i) The form of the Consideration Received by holders of shares of a particular class of outstanding Voting Stock shall be in cash or in the same form as the Related Person has paid for shares of such class of Voting Stock within the two-year period ending on and including

the Determination Date. If, within such two-year period, the Related Person has paid for shares of any class of Voting Stock with varying forms of consideration, the form of Consideration Received per share by holders of shares of such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock acquired by the Related Person within such two-year period.

- (ii) The aggregate amount of Consideration Received per share by holders of each class of Voting Stock in such Business Combination shall be at least equal to the higher of the following (it being intended that the requirements of this paragraph B(ii) shall be required to be met with respect to every such class of Voting Stock outstanding, whether or not the Related Person has previously acquired any shares of that particular class of Voting Stock):
  - (a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Related Person for any shares of that class of Voting Stock acquired by it within the two-year period immediately prior to the Announcement Date or in the transaction in which it became a Related Person, whichever is higher; or
  - (b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date; or
  - (c) in the case of any class of preferred stock, the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.
- (iii) After such Related Person has become a Related Person and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on any outstanding preferred stock; (b) there shall have been (I) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (II) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (c) such Related Person shall have not become the beneficial owner of any newly issued share of Voting Stock directly or indirectly from the Corporation except as part of the transaction which results in such Related Person becoming a Related Person.
- (iv) After such Related Person has become a Related Person, such Related Person shall not have received the benefit, directly or indirectly (except proportionately, solely in such Related Person's capacity as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.
- (v) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Exchange Act and the rules and regulations thereunder (or any subsequent provisions replacing such act, rules or regulations) shall be mailed to all stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to the Exchange Act or subsequent provisions). Such proxy or information statement shall contain on the front thereof,

prominently displayed, any recommendation as to the advisability or inadvisability of the Business Combination which the Continuing Directors, or any of them, may have furnished in writing to the Board of Directors.

4. A majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any determination is to be made by the Board of Directors) shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article Twelfth including, without limitation, (1) whether a person is a Related Person, (2) the number of shares of Voting Stock beneficially owned by any person, (3) whether the applicable conditions set forth in paragraph (2) of Section C have been met with respect to any Business Combination, and (4) whether the assets which are the subject of any Business Combination or the Consideration Received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination have an aggregate Fair Market Value of \$500,000 or more.

5. Nothing contained in this Article Twelfth shall be construed to relieve any Related Person from any fiduciary obligation imposed by law.

**THIRTEENTH:** Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.