

PROPOSED ADVANCE NOTICE
AND PROXY ACCESS BYLAW

Section 1.13. 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 other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or any committee thereof or (c) by any stockholder of the corporation who was a stockholder of record of the corporation at the time the notice provided for in this Section 1.13 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.13.

(2) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 1.13, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute 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 ninetieth (90th) day, nor earlier than the close of business on the one hundred twentieth (120th) day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than seventy (70) days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) 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 and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) 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 text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) 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, (ii) the class or series and number of shares of capital stock of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or

proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the corporation, (v) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, 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 an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 1.13 shall be deemed satisfied by a stockholder with respect to (x) business other than a nomination if the stockholder has notified the corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting or (y) nominations brought before the meeting and included in the corporation's proxy materials pursuant to and in accordance with Section 1.14 hereof or any applicable rule or regulation promulgated under the Exchange Act. The corporation may require any proposed nominee to furnish such other information as the corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the corporation.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 1.13 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (A)(2) of this Section 1.13 and there is no public announcement by the corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.13 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by 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 (1) by or at the direction of the Board of Directors or any committee thereof¹ or (2) provided that the Board of Directors² 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 the notice provided for in this Section 1.13 is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 1.13. 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 entitled to vote in such election of directors 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 paragraph (A)(2) of this Section 1.13 shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. (1) Except as otherwise expressly provided in Section 1.14 below or any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in this Section 1.13 shall be eligible to be elected at an annual or special meeting of stockholders of the corporation 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 Section 1.13. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) 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 Section 1.13 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (A)(2)(c)(vi) of this Section 1.13) and (b) if any proposed nomination or business was not made or proposed in compliance with this Section 1.13, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 1.13, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the

¹ Insert "(or stockholders pursuant to Section ___ [hereof] [of the certificate of incorporation])" if the stockholders have the right to call a special meeting under the corporation's certificate of incorporation or bylaws.

² Insert "(or stockholders pursuant to Section ___ [hereof] [of the certificate of incorporation])" if the stockholders have the right to call a special meeting under the corporation's certificate of incorporation or bylaws.

corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of this Section 1.13 and Section 1.14, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 1.13, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other 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 and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 1.13, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 1.13; provided however, that any references in these bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.13 (including paragraphs (A)(1)(c) and (B) hereof), and compliance with paragraphs (A)(1)(c) and (B) of this Section 1.13 shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of (A)(2), business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time, or nominations brought before the meeting pursuant to and in accordance with Section 1.14). Nothing in this Section 1.13 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the certificate of incorporation.

Section 1.14. Stockholder Nominations Included in the Corporation's Proxy Materials.

(A) In addition to any persons nominated for election to the Board of Directors by or at the direction of the Board of Directors or any committee thereof, subject to the provisions of this Section 1.14, the corporation shall (1) include in its proxy materials for any annual meeting of stockholders (a) the name of any person nominated for election (the "Nominee") by any person who is a stockholder of record of the corporation at the time the Notice of Nomination (as defined below) is delivered to the Secretary of the corporation, who is entitled to vote at the annual meeting and upon such election and who has satisfied the conditions and complied with the procedures set forth in this Section 1.14 (a "Nominator") or by any group of such stockholders (a "Nominator Group") that, collectively as a Nominator Group, has satisfied the conditions and complied with the procedures set forth in this Section 1.14 applicable to a Nominator Group; provided that, in the case of a Nominator Group, each member thereof (each a "Group Member") shall have satisfied the conditions and complied with the procedures set forth

in this Section 1.14 applicable to Group Members,³ and (b) the Nomination Statement (as defined below) furnished by such Nominator or Nominator Group and (2) include such Nominee's name on any ballot distributed at such annual meeting and on the corporation's proxy card (or any other format through which the corporation permits proxies to be submitted) distributed in connection with such annual meeting. For purposes of this Section 1.14, the terms "affiliate" and "beneficial ownership" shall have the meanings ascribed thereto under the General Rules and Regulations under the Exchange Act.

(B) At each annual meeting of stockholders, the Nominator or Nominator Group may nominate one or more Nominees for election at an annual meeting pursuant to this Section 1.14; provided that the total number of Nominees nominated by the Nominator or Nominator Group shall not exceed that number of directors constituting twenty-five percent (25%) of the total number of directors to be elected at the annual meeting (rounded to the nearest whole number, but not less than one);⁴ provided, further, that if the corporation has received notice pursuant to Section 1.13 of these bylaws that a stockholder intends to nominate for election at such meeting a number of nominees greater than or equal to a majority of the total number of directors to be elected at such meeting, no nomination shall be made pursuant to this Section 1.14.⁵ To nominate any such Nominee, the Nominator or Nominator Group shall (1) within the time period applicable to notice of stockholder proposals made at the annual meeting pursuant to Rule 14a-8 of the Exchange Act,⁶ submit to the Secretary of the corporation (a) a written notice of the nomination of such Nominee that includes (i) with respect to the Nominator and the beneficial owner, if any, on whose behalf the nomination is made, or, in the case of a Nominator Group, with respect to each Group Member and any beneficial owner on whose behalf the nomination is made, all of the information required by Section 1.13(A)(2)(c) of these bylaws⁷ and (ii) with respect to each such Nominee, all of the information required by Section 1.13(A)(2)(a) (such

³ The Proposed Bylaw contemplates that nominations may be brought either by a single stockholder or a group of stockholders acting in concert to reach the applicable ownership threshold. Depending on the nature of its stockholder base and other factors, a corporation could decide to limit proxy access to individual stockholders that beneficially own the requisite percentage of outstanding stock.

⁴ The corporation should consider the appropriate number of directors eligible for nomination pursuant to the proxy access bylaw based on a variety of factors, including the current authorized number of directors, whether its board is classified, whether its existing credit agreements include provisions relating to a change of control and other considerations. Moreover, a corporation with multiple classes of stock with separate rights of election likely will need to modify this provision to address that particular issue.

⁵ This proviso, which a corporation may include, allows the corporation to exclude persons nominated pursuant to the proxy access bylaw in the event of a traditional proxy contest. In the event of a proxy context, stockholders are often faced with two competing visions for the future of the corporation. Having proxy access nominees on the ballot, in addition to the competing slates nominated by the corporation and the insurgent, could lead to confusion.

⁶ The corporation may alter the time period during which nominations may be made to take into account, among other things, the particular time periods set forth in its advance notice bylaw.

⁷ The information requirements with respect to the nominating stockholder cross-reference those set forth in the advance notice bylaw and therefore include, among other things, information regarding the stockholder's record and beneficial ownership, including any derivative positions. The corporation may tailor its informational requirements based on its unique profile.

written notice, the "Notice of Nomination");⁸ (b) if the Nominator or Nominator Group so elects, a statement for inclusion in the corporation's proxy statement in support of each Nominee's election to the Board of Directors, which statement shall not exceed five hundred (500) words with respect to each Nominee (the "Nomination Statement");⁹ (c) a representation that all of the facts, statements and other information included in all communications by the Nominator or Nominator Group (including any Group Member) with the corporation and its stockholders, including without limitation the Notice of Nomination and the Nomination Statement, are or will be true and correct in all material respects (and shall not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading);¹⁰ (d) an executed agreement, in a form deemed satisfactory by the Board of Directors, acting in good faith, pursuant to which the Nominator, (or, in the case of a Nominator Group, each Group Member) agrees to (i) comply with all applicable laws and regulations applicable to the use, if any, by the Nominator, Nominator Group or Group Member of soliciting material, (ii) assume all liability stemming from any legal or regulatory violation arising out of the communications by the Nominator, Nominator Group or Group Member with the corporation and its stockholders, including without limitation the Notice of Nomination and the Nomination Statement, (iii) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of any nomination submitted by the Nominator or Nominator Group pursuant to this Section 1.14, (iv) for a period of one year from the date of the annual meeting, not to (x) nominate any individual to be a director of the corporation or conduct any solicitation with respect to an election of directors other than with respect to such annual meeting and in accordance with this Section 1.14,¹¹ or (y) acquire or propose to acquire beneficial ownership of or an economic interest in (including through any derivative or synthetic position) any voting securities of the corporation such that such Nominator (or Group Member) would have aggregate beneficial ownership of and/or an economic interest in, more than the greater of (I) fifteen percent (15%) of the voting power of the outstanding voting securities of the corporation or (II) an additional five percent (5%) of the voting power of the corporation's outstanding voting securities in excess of the

⁸ Likewise, the information requirements with respect to the nominee cross-reference those set forth in the advance notice bylaw. These provisions may be tailored to meet the needs of a particular corporation. For example, if the corporation's organizational documents provide for director qualifications, the information requirements could specifically require information that would indicate whether the nominee would satisfy those qualifications.

⁹ There is no requirement to allow the nominating stockholder to include a nomination statement. If a corporation allows its stockholders to make such a statement, however, it may alter the length of the statement provided by this bylaw, or it may place limitations on the scope of that statement (e.g., the statement may be limited to a description of the nominee's professional experience and qualifications for service as a director).

¹⁰ While not required, the nominating stockholder's representation that all information is accurate and complete, together with the ensuing provisions requiring the stockholder to indemnify the corporation for losses resulting from false or misleading statements and the agreement of the nominee to resign in the event any such information is later determined to have been false or misleading, provide protection to the corporation and all of its stockholders against abuse.

¹¹ This optional provision is designed to prevent a nominating stockholder from gaining a foothold in the board through the proxy access bylaw and then later making an attempt to gain control of the board.

aggregate beneficial ownership and economic interest held by such Nominator (or Group Member) as of the date on which the Notice of Nomination is provided,¹² and (v) furnish to the corporation the updated information required by the penultimate sentence of this Section 1.14(B);¹³ and (e) a letter of resignation signed by each Nominee, which letter shall specify that such Nominee's resignation is irrevocable and that it shall become effective upon a determination by the Board of Directors or any committee thereof (excluding, for purposes of such determination, such Nominee) that (x) any of the information provided to the corporation by the Nominator, the Nominator Group, any Group Member or the Nominee in respect of the nomination of such Nominee pursuant to this Section 1.14 is or was untrue in any material respect (or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading) or (y) the Nominator, the Nominator Group or any Group Member or any affiliate thereof shall have breached its obligations under this Section 1.14; and (2) have beneficially owned (together with its affiliates in the case of a Nominator) or, in the case of a Nominator Group, collectively as a Nominator Group beneficially owned (together with the affiliates of each Group Member) five percent (5%)¹⁴ or more of the corporation's outstanding common stock continuously for at least one year as of the date the Notice of Nomination is submitted to the corporation and have beneficially owned such shares of common stock through the date of the annual meeting at which the nomination is made. For the avoidance of doubt, with respect to any nomination submitted by a Nominator Group pursuant to this Section 1.14, the information required by Section 1.13(A)(2)(c) of these bylaws shall be provided by each Group Member and each such Group Member shall execute and deliver to the Secretary of the corporation an agreement in the form provided in Section 1.14(B)(1)(d) hereof at the time the Notice of Nomination is submitted to the corporation (or, in the case of any person or entity who becomes a Group Member after such date, within 48 hours of becoming a Group Member). In the event that any information included in the Nomination Statement, or any other communications by the Nominator, Nominator Group or any Group Member with the corporation or its stockholders, ceases to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading), each Nominator, Nominator Group or Group Member, as the case may be, shall promptly (and in any event within twenty-four (24) hours of discovering that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements

¹² This provision is designed to limit accumulations by a nominating stockholder, such that the proxy access nomination is not used as the first step in a hostile takeover. A corporation may alter or eliminate this provision based on a number of factors, including whether it currently has a rights plan in place and whether it is subject to Section 203 of the General Corporation Law (and whether any stockholders are exempt therefrom).

¹³ This provision requires the nominating stockholder to "bring down" all of the information previously furnished as of a specified date prior to the meeting. It is designed to give the board advance notice of any factors that may have changed so that the board has an opportunity to advise stockholders of any significant developments that may be material to their voting decision. Depending on the level of trading in the corporation's stock and other factors, a corporation may exclude the updating requirement.

¹⁴ The ownership threshold may be raised or lowered in appropriate circumstances. A corporation with a small capitalization, for example, may decide that a higher ownership threshold is appropriate because the amount of money required to gain a five percent stake in such a company does not reflect an appropriate level of commitment to the long-term success of the corporation which would justify access to the corporation's proxy materials.

made, in light of the circumstances under which they were made and as of such later date, not misleading) notify the corporation of any defect in such previously provided information and of the information that is required to correct any such defect.¹⁵ All such information required to be included in the Notice of Nomination shall be updated as of the record date for notice of the annual meeting at which the Nominee is nominated for election to the Board of Directors (which record date shall be included in a public announcement released on or prior to the date thereof) within five (5) business days after such record date by notice in writing to the Secretary of the corporation. Notwithstanding anything to the contrary set forth herein, if any Nominator, Nominator Group or Group Member has failed to comply with the requirements of this Section 1.14(B), the Board of Directors or the chairman of the meeting shall declare the nomination by such Nominator or Nominator Group to be invalid, and such nomination shall be disregarded.¹⁶

(C) Notwithstanding anything to the contrary contained in this Section 1.14, (1) the corporation may omit from its proxy materials any information, including all or any portion of the Nomination Statement, if the Board of Directors in good faith determines that the disclosure of such information would violate any applicable law or regulation, (2) the corporation may exclude from its proxy materials any Nominee pursuant to this Section 1.14 if the Board of Directors in good faith determines that such Nominee's election to the Board of Directors would result in the corporation violating or failing to be in compliance with any applicable law, rule or regulation to which the corporation is subject, including any rules or regulations of any stock exchange on which the corporation's shares are traded, and (3) unless otherwise required by law, if a Nominator or any Group Member (or any qualified representative thereof or qualified representative of a Nominator Group) does not appear at the meeting of stockholders to present any nomination submitted pursuant to this Section 1.14, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(D) In the event that any Nominator or Nominator Group submits a nomination at an annual meeting and such Nominator or any Group Member had nominated (or been a Group Member of a Nominator Group that had nominated) a Nominee pursuant to this Section 1.14 within the past three years from the date of such annual meeting and such Nominee shall not have received at least twenty-five percent (25%) of the total votes eligible to be cast in favor of such Nominee's election, then such nomination shall be disregarded.¹⁷ For the avoidance of

¹⁵ This provision requires a nominator or group of nominators to correct information which, even if it were true and correct at the time it was provided, has later become false or misleading.

¹⁶ This provision requires the chairman to disregard nominations made in violation of the proxy access bylaw. It may be made permissive, rather than mandatory, but we caution that such discretion is in some respects a double-edged sword, as it could subject the chairman to challenge from the nominating stockholder (in the event the chairman determines to exclude the proposal) or other stockholders (in the event the chairman permits a proposal submitted in violation of the proxy access bylaws to be brought before the meeting).

¹⁷ This optional provision eliminates certain nominations made by persons or groups that over a specified period of time have failed to convince a specified percentage of their fellow stockholders of the merits of their nominees. The threshold percentage and waiting period may be modified as appropriate. Another alternative would be to relate the threshold percentage to the number of votes cast or to the margin between the number of votes received by the nominator's unsuccessful nominee and the number received by the successful board candidate that received the fewest votes of the successful candidates in such election.

doubt, this Section 1.14(D) shall not prevent any stockholder from nominating any person to the Board of Directors pursuant to and in accordance with Section 1.13 of these bylaws.

(E) In the event the corporation has received nominations from more than one Nominator or Nominator Group pursuant to Section 1.14(B) which in the aggregate exceed 25% of the directors to be elected at the meeting, the corporation shall only be required to include in its proxy materials the nomination submitted by the Nominator or Nominator Group having the greatest beneficial ownership of the corporation's outstanding common stock on the last date that a Notice of Nomination may be submitted pursuant to Section 1.14(B) hereof.¹⁸

(F) The foregoing provisions of this Section 1.14 shall be deemed to have been satisfied with respect to any nomination that is submitted to the corporation and included in the corporation's proxy materials pursuant to and in accordance with any applicable rule or regulation promulgated under the Exchange Act.

¹⁸ The Proposed Bylaw contemplates that only the nominating stockholder or nominating group having the greatest percentage beneficial ownership shall be entitled to use the proxy access bylaw. Under this provision, even if that nominating stockholder or nominating group does not nominate the entire number of directors eligible to be nominated pursuant to the proxy access bylaw, no other nominating stockholder or nominating group may use the proxy access bylaw to submit nominations for the unallocated seats. This provision may be changed in any number of ways. The corporation could, for example, allocate seats, up to the maximum number eligible for nomination under the proxy access bylaw, based on ownership; it could allocate all potential seats exclusively to the stockholder first submitting a nomination, regardless of whether that stockholder submits nominees up to the number of available seats; it could allocate seats, up to the maximum number of eligible seats, to stockholders based on the order in which their nominations are received; or it could develop an alternate method for allocating eligible board seats.