

PROPOSAL 3

**AMENDMENT OF BYLAWS ADVANCE NOTICE PROCEDURES AND
OTHER CONFORMING CHANGES**

Stockholders are being asked to approve certain amendments to the Amended and Restated Bylaws of the company ("Bylaws"). The proposed amendments to Section 2.10 (Stockholder Action by Written Consent without a Meeting) would update the Bylaws to reflect certain changes to the Delaware General Corporation Law (the "DGCL") and make certain other ministerial changes and clarifications. The proposed amendment to Section 10.4 (Amendment) would make a ministerial change to remove an inapplicable section reference. In addition, the proposed amendments to Section 2.14 (Advance Notice Procedures) would make certain changes to our advance notice procedures with respect to the proposal of business and nominations for director elections by stockholders to, among other things, (i) clarify and adjust the timing and process for submitting stockholder proposals and stockholder nominations, (ii) expand the scope of disclosures required to be included in the proposing stockholder's notice with respect to the proposing stockholder and each proposed director nominee, (iii) require the proposing stockholder to update and supplement the information provided as of the record date(s) for the meeting of the company's stockholders and as of the date that is 10 business days prior to such meeting of stockholders or any adjournment, rescheduling, postponement or other delay thereof, (iv) require submitting stockholders to hold shares of record through the date of the stockholder meeting and to attend the meeting in person or through a qualified representative, (v) give the Board discretion to request more information from nominating stockholders and director nominees, and (vi) reflect the SEC's new universal proxy rules, including by requiring compliance with such rules in order for a nomination to be valid and requiring reasonable evidence of compliance with the rules.

This proposal is a result of the Board's continuous effort to improve and enhance our corporate governance practices, policies and functioning, taking into account ongoing corporate governance trends and peer practices. The Board has determined that it is in the best interests of the company and its stockholders to amend our Bylaws to implement updates to the DGCL, make certain other ministerial changes, clarifications and conforming revisions, and update our advance notice procedures as discussed in this proposal. Accordingly, our Board has approved, and recommends that all stockholders approve, the proposed amendments to our Bylaws as provided in this proposal.

Proposed Amendments

Updates to conform to the current DGCL and ministerial changes, clarifications and conforming revisions. The amendments to Section 2.10 would update the Bylaws to reflect certain changes to the DGCL and make certain other ministerial changes and clarifications with respect to the provision governing stockholder actions by written consent without a meeting. The amendment to Section 10.4 would make a ministerial change to remove an inapplicable section reference from the provision governing amendments to our Bylaws.

Amendments to advance notice procedures. Currently, Section 2.14 of our Bylaws provides that a proposing stockholder must give written notice to the company's secretary not less than 45 days nor more than 75 days prior to the one-year anniversary of the date on which we first mailed our proxy materials or a notice of availability of proxy materials for the preceding year's annual meeting of the company's stockholders. The proposing stockholder's notice must also provide certain information about the proposing stockholder and each individual nominated by the proposing stockholder.

Section 2.14, as amended, would require the proposing stockholder to give written notice of stockholder business or director nominations to the company's secretary not earlier than 8:00 a.m., Pacific Time, on the 120th day and not later than 5:00 p.m., Pacific Time, on the 90th day prior to the one-year anniversary of the preceding year's annual meeting of the company's stockholders as first specified in the company's notice of meeting. In the event that no annual meeting was held in the previous year or if the date of the annual meeting of the current year

is more than 30 days from the anniversary date of the prior year's annual meeting, the proposing stockholder's notice must be received not earlier than 8:00 a.m., Pacific Time, on the 120th day prior to such annual meeting and not later than 5:00 p.m., Pacific Time, on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public disclosure of the date of such meeting is first made. With regard to special meetings of the stockholders called by the Board for the election of directors, the proposed deadlines for advance notice of director nominations mirror the proposed deadlines set forth in the preceding sentence in relation to nominations at an annual meeting. Section 2.14, as amended, would also reflect other updates to the procedures for stockholders to nominate directors for election at special meetings, including to conform to the updated notice requirements applicable to annual meetings.

Section 2.14, as amended, would require that the proposing stockholder's notice contain the following additional information:

- a representation that the proposing stockholder will continue to be a holder of record through the date of the meeting;
- certain information specified in Section 2.14, as amended, as well as the information that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies in support of such proposal pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act") by the proposing stockholder and any associated person;
- information relating to any proposed item of business as the company may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action; and
- a representation as to whether the proposing stockholder or any associated person intends to solicit proxies from holders of at least the percentage of the voting power of the company's then-outstanding voting stock required under applicable law to carry the proposal or elect the stockholder nominee (including, with respect to stockholder nominations, the information required pursuant to the new universal proxy rules set forth in Rule 14a-19 of the Exchange Act) and otherwise solicit proxies from stockholders in support of such proposal or nomination.

Section 2.14, as amended, would require that the proposing stockholder's notice contain the following additional information about each proposed director nominee:

- certain information about the nominee specified in Section 2.14, as amended;
- a written representation and agreement with respect to certain disclosure items required for director nominees under the advance notice provisions set forth in Section 2.14, as amended; and
- a written statement executed by the nominee consenting to, among other things, being named as a nominee and in the company's form of proxy pursuant to Rule 14a-19 of the Exchange Act.

Section 2.14, as amended, would also explicitly require each stockholder nominee to complete, sign and submit the questionnaire(s) required of director nominees.

The foregoing summary is, in all respects, qualified by the text of the proposed amended Sections 2.10, 2.14 and 10.4 of our Bylaws, which are set forth in **Appendix B**.

Reasons for the Proposal

To make updates to conform to the current DGCL and make ministerial changes, clarifications and conforming revisions.

The intent of the proposed changes to Section 2.10 is to clarify the applicable provisions to avoid any ambiguities or compliance pitfalls and to align our Bylaws provisions with the current DGCL and market practice. The intent of the proposed change to Section 10.4 is to make a ministerial change to remove an inapplicable section reference.

Amendments to advance notice procedures. Advance notice requirements provide companies with advance notice of a stockholder's intention to nominate directors for election to a company's board or to propose other business to be considered at a stockholder meeting. Currently, our advance notice requirements with respect to director nominees or other business are provided in Section 2.14 of our Bylaws. These requirements are intended to give the company, the Board and its stockholders sufficient time, and the necessary information, to make an informed judgment about how to respond, consider and ultimately to vote on such nominations or other business.

Our advance notice provisions in Section 2.14 of our Bylaws are designed to promote transparency and provide for an orderly stockholder meeting process. Our Board believes the proposed amendments to Section 2.14 of our Bylaws provide the Board and the company with the time and information necessary to thoughtfully and thoroughly consider director nominees and other business proposed by stockholders and to conform our advance notice requirements to current best practices, including with respect to the SEC's "universal proxy" rules.

Board of Directors Approval

After careful consideration by the Nominating and Governance Committee and the Board as part of their regular review of our corporate governance documents, and after review of the governing documents of other similarly situated companies and consideration of current best practices and in response to the SEC's recently adopted "universal proxy" rules and changes to the DGCL, our Board has determined that the updates to the timing requirements, the expanded scope of the disclosure requirements, and the other clarifications related to stockholder submissions of proposals of business and nominations for director elections set forth in the proposed amendments to Section 2.14 and the additional changes set forth in the proposed amendments to Sections 2.10 and 10.4 of our Bylaws are appropriate and in the best interests of the company and our stockholders. Our Board has approved and adopted such proposed amendments subject to receipt of the requisite approval by the company's stockholders and has recommended such proposed amendments to the company's stockholders for approval and adoption.

Vote Required

The amendments to Sections 2.10, 2.14 and 10.4 of our Bylaws in this Proposal 3 require the affirmative vote of the holders of at least 66 2/3% of the voting power of the issued and outstanding shares of our capital stock entitled to vote on Proposal 3 at the Annual Meeting in person or by proxy. These changes will not be effective unless requisite stockholder approval is obtained. Under the rules of the NYSE, brokers are prohibited from giving proxies to vote on amendments to our Bylaws unless the beneficial owner of such shares has given voting instructions on the matter. This means that if your broker is the record holder of your shares, you must give voting instructions to your broker with respect to Proposal 3 if you want your broker to vote your shares on the matter. Any abstentions or broker non-votes will have the same effect as a vote against the proposal.

Our Board of Directors recommends a vote "FOR" the amendment of Sections 2.10, 2.14 and 10.4 of the Bylaws.

PROPOSAL 4

AMENDMENT OF BYLAWS TO ADD FORUM SELECTION PROVISION

Stockholders are being asked to approve an amendment to our Bylaws to add a new provision which would designate the exclusive forums in which certain claims against the company may be brought.

Proposed Amendment

The amendment to our Bylaws would create a new Section 10.5 (Forum Selection) providing that (i) the federal district courts of the United States will be the sole and exclusive forum for any claim asserting a cause of action arising under the Securities Act, against any person in connection with any offering of the company's securities, including any auditor, underwriter, expert, control person or other defendant, unless the company consents to an alternative forum, and (ii) the Court of Chancery in the state of Delaware will be the sole and exclusive forum for certain actions involving the company unless the company consents to an alternative forum. Specifically, the Court of Chancery would be the sole and exclusive forum for (a) derivative actions or proceedings brought on behalf of the company; (b) any action asserting a claim of breach of a fiduciary duty owed by any director, stockholder, officer or other employee of the company to the company or our stockholders; (c) any action arising pursuant to any provision of the DGCL, our Certificate of Incorporation or our Bylaws (as each may be amended from time to time); and (d) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (a) through (d) above, any claim as to which such court determines there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination). We believe that the forum selection amendment to our Bylaws will reduce the risk that we could become subject to duplicative litigation in multiple forums, as well as provide predictability in the procedures applied to such claims and promote more efficient handling of securities law claims.

The foregoing summary is, in all respects, qualified by the text of the proposed new Section 10.5 of our Bylaws, which is set forth in **Appendix C**.

Reasons for the Proposal

By designating the forums in which certain claims can be brought, we intend to promote the efficient resolution of such claims and reduce the likelihood of duplicative lawsuits being brought in multiple jurisdictions. Further, the ability of plaintiffs to litigate claims governed by Delaware law in courts other than the Court of Chancery of the State of Delaware (including state courts outside the State of Delaware) may mean that claims are brought in courts that may not apply Delaware law in the same manner as the Court of Chancery of the State of Delaware. Even if such other courts sought to apply Delaware law in a manner consistent with the Court of Chancery, the outcomes of those cases and cases brought in other forums could be inconsistent with each other and with the manner in which the Court of Chancery would decide such cases. In addition, the Board considered the fact that the Court of Chancery is widely regarded as the leading court for the determination of corporate law disputes in terms of precedent, experience and focus. The Court of Chancery's considerable expertise has led to the development of a substantial and influential body of case law interpreting the DGCL. We expect this will provide us and our stockholders with more consistency and predictability regarding the outcome of corporate disputes, which can minimize the time, cost and uncertainty of litigation for all parties.

Additionally, the Board believes that designating the federal district courts of the United States as the exclusive forum for claims brought under the Securities Act promotes many of the same benefits to us and our stockholders as discussed above.

In reaching its conclusion to recommend that stockholders approve the forum selection amendment to our Bylaws, the Board considered that the exclusive forum provisions contemplated by the forum selection

amendment to our Bylaws may in some instances impose additional litigation costs on plaintiffs in pursuing certain claims, particularly if a plaintiff does not reside in or near the State of Delaware. The Board also weighed the possibility that an exclusive forum provision may limit a plaintiff's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, stockholders, officers or other employees, which such plaintiffs may claim limits their ability to enforce certain rights. The Board believes that the benefits of the forum selection amendment to our Bylaws to us and our stockholders far outweigh these potential drawbacks.

Further, some plaintiffs might prefer to litigate claims under the Securities Act in a state court because it may be more convenient or viewed as being more favorable to them, or for other reasons. Again, the Board believes that the substantial benefits to us and our stockholders as a whole from designating the federal district courts of the United States as the exclusive forum for resolution of any claim asserting a cause of action arising under the Securities Act outweigh these concerns.

Board of Directors Approval

After careful consideration by the Nominating and Governance Committee and the Board as part of their regular review of our corporate governance documents, and after review of the governing documents of other similarly situated companies and consideration of current best practices, our Board has determined that an amendment to our Bylaws designating the exclusive forums in which certain claims against us may be brought is appropriate and in the best interests of the company and our stockholders, has approved and adopted such proposed amendment subject to receipt of the approval by the company's stockholders and has recommended such proposed amendment to the company's stockholders for approval and adoption, even though such stockholder approval is not required under our Bylaws.

Vote Required

The proposed addition of the forum selection provision in a new Section 10.5 of our Bylaws does not require stockholder approval under our Bylaws; however, our Board believes that it is in the best interests the company and its stockholders to seek a stockholder vote to approve the proposed addition of the forum selection provision in a new Section 10.5 of our Bylaws. We are seeking the approval of the proposed addition of the forum selection provision in a new Section 10.5 of our Bylaws from a majority of the voting power of the issued and outstanding shares of our capital stock entitled to vote on Proposal 4. Under the rules of the NYSE, brokers are prohibited from giving proxies to vote on amendments to our Bylaws unless the beneficial owner of such shares has given voting instructions on the matter. This means that if your broker is the record holder of your shares, you must give voting instructions to your broker with respect to Proposal 4 if you want your broker to vote your shares on the matter. Any abstentions or broker non-votes will have the same effect as a vote against the proposal.

The Board of Directors recommends a vote "FOR" the addition of a new Section 10.5 to the Bylaws.