September 2, 2010

Shareholder Proxy Access: Time To Get Ready

As we described in our recent memo, the SEC has adopted rules affording shareholders access to company proxy statements for the nomination of director candidates. The new regime, which includes new access Rule 14a-11 and amendments to Rule 14a-8, is expected to become effective in early November and will be applicable for the 2011 proxy season for most companies. It is now time for companies to take action to prepare for these sweeping changes. We opposed proxy access as an unnecessary and imprudent step. However it is now law and companies need to implement structures and procedures designed to make the proxy access regime work with minimum damage to the ability of boards to build long-term value for all shareholders. This memo highlights some of the major actions companies should consider:

Monitor and Engage with Significant Shareholders. While it has always been important for companies to engage actively with their major shareholders to gain a better understanding of their views and concerns, this takes on a heightened relevance in light of the new proxy access rules. In some cases, the group of shareholders that warrant engagement may have to be expanded. The new rules afford proxy access to shareholder groups who have collectively held at least 3% of the voting power of a company's stock continuously for at least three years. In light of these ownership thresholds, companies should actively monitor their shareholder base, and may wish to engage third parties to help them identify holders, including smaller long-term shareholders, who may be eligible to initiate or participate in nominating groups. Engaging with shareholders in advance of the Rule 14a-11 notice period should afford companies a better view of their shareholders' interests in becoming involved in the nomination process.

In addition, engaging constructively and pro-actively with shareholders may enable companies to anticipate and address investor concerns that could otherwise lead to nominations. While it will not be possible to head off all nominations, particularly from unions, activists and others with special non-shareholder agendas, a company's ability to resist a special interest access slate will be greatly enhanced if it has fostered good relations with its major shareholders. Of course, companies will need to be reasonable in their allocation of resources, particularly in terms of senior management time and focus, in connection with their investor relations programs, and boards of directors should retain the ultimate decision-making authority and responsibility on issues and concerns that shareholders may raise. However, in light of proxy access, and other recent developments in the corporate governance landscape, boards of directors and management will be well advised to use reasonable efforts to educate shareholders about their company's strategy, encourage long-term investors, and develop their relationships with shareholders and their understanding of their shareholders' perspectives on the company well in advance of any potential proxy contest.

Respond to "Early Warning" Schedule 14N Filings. We expect that, in most cases, a shareholder considering nominating directors under proxy access will first seek to solicit other shareholders to form a nominating group to aggregate their holdings in order to meet the 3%

minimum ownership threshold or establish a larger nominating ownership position. A shareholder seeking to form a nominating group will likely use a new exemption from the proxy rules adopted for such solicitations, which will require it to file a notice on new Schedule 14N as soon as it starts communicating with other shareholders, as well as copies of any written communications it makes. These filings will disclose the number of shares held by the soliciting shareholder and may identify potential nominees or the characteristics of nominees that the shareholder intends to propose. Companies should monitor these 14N filings for "early warning" of potential access nominations, and consider engaging with the soliciting shareholder or others who may be solicited to join the nominating group to understand and potentially address their concerns prior to the submission of an actual nomination that may generate its own momentum.

Companies should be aware, however, that if they engage in communications with a shareholder specifically about a nomination prior to the shareholder filing a nomination on Schedule 14N, that nomination will not count against the 25% cap on shareholder access nominees if the company later agrees to recommend the election of that nominee.

Revise Advance Notice Bylaws. Companies should review their advance notice bylaws and consider changes in light of the new proxy access rules (which will apply by law even if not addressed in the bylaws). Our model advance notice bylaws, as updated to reflect proxy access, are attached. The model retains a suggested advance notice period of 90 to 120 days prior to the anniversary of the prior annual meeting for shareholder proposals of new business or for director nominations made outside of Rule 14a-8 and Rule 14a-11, consistent with established practice and case law. New Rule 14a-11, which our revised model bylaws treat as an exception to the generally applicable advance notice requirements, requires shareholders seeking to include their nominees in the company's proxy statement to file a notice no earlier than 150 days, and no later than 120 days, prior to the anniversary of the mailing date of the prior year's proxy statement (that is, 60 to 70 days earlier than under our model advance notice bylaw for proposals made outside the federal rules). Particularly in light of the now-mandatory proxy access route, companies which did not previously have state-of-the-art advance notice bylaws for notice of business and director nominations should adopt or revise such provisions.

Review Director Qualification Bylaws. Companies should review any director qualification provisions in their bylaws. Many companies have adopted standards that all candidates must meet to be eligible to serve as directors (and our model bylaws have long included such provisions). The new access rules do not negate director qualification requirements, which are governed by state law, but operate alongside them. While failure to satisfy the company's director qualification standards will not preclude a properly nominated access nominee from being included in the proxy statement under Rule 14a-11, or from being voted upon, companies may, subject to state law, preclude nominees from serving as directors for failure to satisfy reasonable qualification requirements. In addition, nominating shareholders using Rule 14a-11 must disclose whether, to their knowledge, their nominees meet the company's director qualifications, which may affect both the quality of the nominees that are proposed and the number of votes that non-qualified nominees may receive. We are not proposing any changes to the director qualification provisions of our model bylaws, which are included in the attachment.

Review Corporate Governance Policies and Board Committee Charters. Companies should consider updating their corporate governance policies and board committee charters to take account of the proxy access regime. For example, companies may wish to address in their nominating committee charter the responsibility for reviewing nominees proposed through the proxy access process, as well as regular nominees. Education of new directors, including some who may never before have served on a board, should be considered. Companies should also consider implementing appropriate director policies regarding confidentiality and public statements concerning company matters, especially in light of the possibility of director candidates with ties to shareholders with special interests. Rule 14a-11 mandates that the nominating shareholders disclose relationships between themselves and their candidates as well as relationships between the company and either candidates or their proponents, but does not require that nominees be independent from the nominating shareholders nor that they satisfy subjective independence requirements under exchange rules.

Director Qualifications and Evaluation. The SEC adopted amendments to the proxy rules in December 2009 that require companies to disclose the qualifications, skills and experiences the board considered in determining that each particular director was qualified to serve on the board. These new disclosure requirements, together with the adoption of proxy access, reinforce the importance of boards engaging in a thorough and candid evaluation of their members, including to ensure that the board's composition remains appropriate in an evolving business environment. Companies should also consider which, if any, board members may be vulnerable to be targeted by proxy advisory services such as ISS during a proxy access or short-slate contest, as well as whether there are any issues on which the company is at risk for a withhold recommendation against some or all nominees.

Review Appropriate Board Size. Boards should periodically review the appropriate size of the board for the company's particular circumstances, taking into account all relevant factors, including having sufficient independent and qualified directors to fill the needs of all board committees. If the calculation of the 25% cap on proxy access nominees does not result in a whole number based on the board's size, the SEC rules provide that the cap rounds down to the closest whole number of nominees below 25% (with a minimum of one nominee). Thus, a company with a seven-member board will face a maximum of one nominee (14.3% of the board) under Rule 14a-11, and, likewise, a company with an eleven-member board will face a maximum of two nominees (18.2% of the board). Companies should be cautious about the timing for implementing any change in board size; consideration of the appropriate board size and any action to change the size of the board is better accomplished outside the context of any potential election contest.

Consider Ways To Minimize Disruption. The new proxy access regime may lead to a higher incidence of proxy contests, as well as "shadow" proxy contests, where nominations are threatened in the context of seeking to change corporate policy or board composition. Activists can also be expected to take advantage of the one-way street created by the SEC, together with the 2009 amendments to Delaware law permitting shareholders to adopt access bylaws, to press for mandatory bylaw amendments providing even more favorable procedures for proxy access, such as reducing the 3% eligibility requirement or the three-year holding period. A game plan to deal with these possibilities should be developed.

Board Stability and Dynamics. Although we have often warned of the potential threats posed by proxy access to board stability and collegiality, and thus effectiveness, much will depend on shareholders' agendas and the quality of candidates put forward by shareholders and groups using – or threatening to use – the access process, as well as the way these candidates choose to conduct themselves. We are hopeful that major institutional shareholders will use their newfound power constructively and responsibly. Accordingly, in the event that candidates nominated through the proxy access process are elected to a board, the board should generally seek to integrate those new directors constructively, expect them to operate with dedication, diligence and integrity, and only resort to protective structures, such as increasing use of committees, as some have advocated, as a last resort.

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Although there are some actions in light of the new proxy access rules that can and should be taken at this time, as discussed above, many of the effects of the new regime are still to be determined, and a fuller picture of the new environment will only emerge in time. Active monitoring and engagement by boards of directors and management will be required as the new landscape of shareholder-board relationships develops and unfolds.

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WLRK MODEL ADVANCE NOTICE AND DIRECTOR QUALIFICATION BYLAWS*

SECTION 2.7. Order of Business.

(A) Annual Meetings of Stockholders. At any annual meeting of the stockholders, only such nominations of persons for election to the Board of Directors shall be made, and only such other business shall be conducted or considered, as shall have been properly brought before the meeting. For nominations to be properly made at an annual meeting, and proposals of other business to be properly brought before an annual meeting, nominations and proposals of other business must be (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly made at the annual meeting, by or at the direction of the Board of Directors or (c) otherwise properly requested to be brought before the annual meeting by a stockholder of the Corporation in accordance with these By-laws. For nominations of persons for election to the Board of Directors or proposals of other business to be properly requested by a stockholder to be made at an annual meeting, a stockholder must (i) be a stockholder of record at the time of giving of notice of such annual meeting by or at the direction of the Board of Directors and at the time of the annual meeting, (ii) be entitled to vote at such annual meeting and (iii) comply with the procedures set forth in these By-laws as to such business or nomination. The immediately preceding sentence shall be the exclusive means for a stockholder to make nominations or other business proposals (other than matters properly brought under Rule 14a-8 **or Rule 14a-11** under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of stockholders.

(B) Special Meetings of Stockholders. At any special meeting of the stockholders, only such business shall be conducted or considered, as shall have been properly brought before the meeting pursuant to the Corporation's notice of meeting. To be properly brought before a special meeting, proposals of business must be (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or (b) otherwise properly brought before the special meeting, by or at the direction of the Board of Directors.

Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (i) is a stockholder of record at the time of giving of notice of such special meeting and at the time of the special meeting, (ii) is entitled to vote at the meeting, and (iii) complies with the procedures set forth in these By-laws as to such nomination.

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* These model by-laws have been marked to highlight suggested changes arising from the adoption of the proxy access rules. The model assumes that shareholders can not call special meetings and includes other provisions which may not be applicable to all companies. Companies should adapt this model to fit their own circumstances, including applicable state law.

The immediately preceding sentence shall be the exclusive means for a stockholder to make nominations or other business proposals before a special meeting of stockholders **(other than matters properly brought under Rule 14a-8 or Rule 14a-11 under the Exchange Act and included in the Corporation's notice of meeting).**

(C) General. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the Chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with these By-laws and, if any proposed nomination or other business is not in compliance with these By-laws, to declare that no action shall be taken on such nomination or other proposal and such nomination or other proposal shall be disregarded.

SECTION 2.8. Advance Notice of Stockholder Business and Nominations.

(A) Annual Meeting of Stockholders. Without qualification or limitation, **subject to Section 2.8(C)(4) of these By-laws,** for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.7(A) of these By-laws, the stockholder must have given timely notice thereof (including, in the case of nominations, the completed and signed questionnaire, representation and agreement required by Section 2.9 of these By-laws) and timely updates and supplements thereof in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action.

To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period for the giving of a stockholder's notice as described above.

Notwithstanding anything in the immediately preceding paragraph to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased by the Board of Directors, and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.8(A) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

(B) Special Meetings of Stockholders. **Subject to Section 2.8(C)(4) of these By-laws,** 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 stockholder may nominate a person or persons (as the case may be) for election to such position(s) to be elected as specified in the Corporation's notice calling the meeting, provided that the stockholder gives timely notice thereof (including the completed and signed questionnaire, representation and agreement required by Section 2.9 of these By-laws) and timely updates and supplements thereof in writing to the Secretary. In order to be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting, or the public announcement thereof, commence a new time period for the giving of a stockholder's notice as described above.

In addition, to be timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting in the case of the update and supplement required to be made as of the record date, and not later than eight (8) business days prior to the date for the meeting, any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof.

(C) Other Provisions.

(1) To be in proper form, a stockholder's notice (whether given pursuant to Section 2.7(A) or 2.7(B) of these By-laws) to the Secretary must include the following, as applicable.

(a) As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, a stockholder's notice must set forth: (i) the name and address of such stockholder, as they appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith, (ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the Corporation, through the delivery of cash or other property, or otherwise, and without regard of whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (any of the foregoing, a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any class or series of shares of the Corporation, (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such stockholder, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such stockholder with respect to any class or series of the shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the Corporation (any of the foregoing, "Short Interests"), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (G) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household, (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such

stockholder, and (I) any direct or indirect interest of such stockholder in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement and form of proxy or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(b) If the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, a stockholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (iii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(c) As to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors, a stockholder's notice must, in addition to the matters set forth in paragraph (a) above, also set forth: (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(d) With respect to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors, a stockholder's notice must, in addition to the matters set forth in paragraphs (a) and (c) above, also include a completed and signed questionnaire, representation and agreement required by Section 2.9 of these By-laws. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be

material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(2) For purposes of these By-laws, "public announcement" shall mean disclosure in a press release reported by a 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 provisions of these By-laws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in these By-laws; provided, however, that any references in these By-laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.7 of these By-laws.

(4) Nothing in these By-laws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act**, (ii) of stockholders to request inclusion of nominees in the Corporation's proxy statement pursuant to Rule 14a-11 under the Exchange Act or (iii**) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these By-laws. Subject to Rule 14a-8 **and Rule 14a-11** under the Exchange Act, nothing in these By-laws shall be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation's proxy statement any nomination of director or directors or any other business proposal.

SECTION 2.9. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation **(or, in the case of a nomination brought under Rule 14a-11 of the Exchange Act, to serve as a director of the Corporation)**, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.8 of these By-laws **or, in the case of a nomination brought under Rule 14a-11 of the Exchange Act, prior to the time such person is to begin service as a director**) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request), and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, **[**(C) beneficially owns, or agrees to purchase within 90 days if elected as

a director of the Corporation, not less than [___] common shares of the Corporation ("Qualifying Shares") (subject to adjustment for any stock splits or stock dividends occurring after date of such representation or agreement), will not dispose of such minimum number of shares so long as such person is a director, and has disclosed therein whether all or any portion of the Qualifying Shares were purchased with any financial assistance provided by any other person and whether any other person has any interest in the Qualifying Shares,**]**[**] and (D) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time **[**and (E) will abide by the requirements of *[any resignation policy in connection with majority voting, if applicable]*].

[**] To be included only if the Corporation has share ownership requirements for directors.