

It is hereby RESOLVED that pursuant to Section 109 of the Delaware General Corporation Law, 8 Del. C. § 109, and Article XII of the corporation's By-Laws, the corporation's By-Laws are hereby amended by adding a new Section 17 to Article III as follows: Section 17. Policies on Stockholder Rights Plans.

- (a) A "policy-abandoning decision" refers in this By-law to any decision by the Board that is not ratified by the stockholders to (i) act inconsistently with the terms of any policy or guideline that was in effect as of the date of the preceding election of Directors that places limits on the Board's ability to adopt, amend or implement a stockholder rights plan without shareholder ratification (the "Policy"), or (ii) to amend, repeal, or modify the Policy.
- (b) Any policy-abandoning decision by the Board shall require the affirmative vote of 80% of the members of the Board.
- (c) If the Board makes a policy-abandoning decision, then any compensation paid to Directors between the date of such decision and the following annual meeting shall require ratification by the stockholders. The Board may authorize advancing payments to Directors prior to receiving stockholder ratification for such compensation provided that the corporation takes reasonable steps to ensure that any payments so made be returned to the corporation in the event that they are not ratified by the stockholders at or before the annual meeting following the decision. This provision shall not apply to any director compensation paid pursuant to contractual agreements entered into prior to the effective date of this Section.
- (d) Nothing in this Section should be construed to permit or validate any policy-abandoning decision that otherwise would be prohibited or invalid. This By-law Amendment shall be effective immediately and automatically as of the date it is approved by the vote of stockholders in accordance with Article XII of the corporation's By-laws.

### **SUPPORTING STATEMENT**

Statement of Professor Lucian Bebchuk: I believe that a Board decision to deviate without stockholder ratification from a policy on stockholder rights plans in effect at the last director elections would raise significant concerns. I also believe that state law does not categorically prevent all policy-abandoning decisions. The proposed arrangement would prevent policy-abandoning decisions not ratified by the stockholders for which there is significant opposition among the Directors. It would not impede, however, any policy-abandoning decision that stockholders would ratify.

Furthermore, I believe that, if the Board were to make a policy-abandoning decision without stockholder ratification, it would be desirable to subject director compensation to stockholder ratification. A ratification requirement would not preclude paying Directors adequately but rather would subject director compensation to stockholder review in circumstances that I believe could make stockholder review of Board performance useful.

Although the proposed By-law would apply to policy-abandoning decisions, it would not endorse them, explicitly specifying that it should not be construed to permit or validate any policy-abandoning decisions that otherwise would be prohibited or invalid.

I urge you to vote "yes" to support the adoption of this proposal.