



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-0402



03017298

NO ACT  
P.E 1-13-03  
0-6217

March 10, 2003

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306

Re: Intel Corporation  
Incoming letter dated January 13, 2003

Act 1934  
Section 14A-8  
Rule 3-10-2003  
Public Availability

Dear Mr. Mueller:

This is in response to your letter dated January 13, 2003 concerning the shareholder proposal submitted to Intel by Robert D. Morse. We also have received a letter from the proponent dated January 21, 2003. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

PROCESSED  
MAR 14 2003  
THOMSON  
FINANCIAL

Sincerely,

*Martin P. Dunn*

Martin P. Dunn  
Deputy Director

Enclosures

cc: Robert D. Morse  
212 Highland Avenue  
Moorsetown, NJ 08057-2717

72-574

**GIBSON, DUNN & CRUTCHER LLP**  
**LAWYERS**

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306

(202) 955-8500

www.gibsondunn.com

rmueller@gibsondunn.com

January 13, 2003

RECEIVED  
2003 JAN 14 AM 10:21  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Direct Dial

(202) 955-8671

Fax No.

(202) 530-9569

Client No.

C 42376-00006

VIA HAND DELIVERY

Office of the Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: *Stockholder Proposal of Mr. Robert D. Morse*  
*Exchange Act of 1934—Rule 14a-8*

Dear Ladies and Gentlemen:

This letter is to inform you that our client, Intel Corporation ("Intel" or the "Company"), intends to omit from its proxy statement and form of proxy for its 2003 Annual Stockholders Meeting (collectively, the "2003 Proxy Materials") a stockholder proposal and supporting statement (the "Proposal") received from Mr. Robert D. Morse (the "Proponent"). The Proposal and Supporting Statement, which the Company received on August 26, 2002, are attached hereto as Exhibit A.

The Proposal requests that the Company make various changes to its statements regarding voting instructions in its "Proxy Material." On behalf of our client, we hereby notify the Division of Corporation Finance of Intel's intention to exclude the Proposal from its 2003 Proxy Materials on the bases set forth below, and we respectfully request that the staff of the Division of Corporation Finance (the "Staff") concur in our view that the Proposal is excludable on the bases set forth below.

Pursuant to Rule 14a-8(j), enclosed herewith are six (6) copies of this letter and its exhibits. Also in accordance with Rule 14a-8(j), we are mailing on this date a copy of this letter and its exhibits to the Proponent, informing him of the Company's intention to exclude the Proposal from the 2003 Proxy Materials. Intel intends to file its definitive 2003 Proxy Materials

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 2

with the Securities and Exchange Commission (the "Commission") on or after April 3, 2003. Accordingly, pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before Intel intends to file its definitive proxy statement and form of proxy with the Commission.

## BASES FOR EXCLUSION

We believe that the Company may exclude the Proposal from the 2003 Proxy Materials pursuant to the following rules:

- Rule 14a-8(b) and Rule 14a-8(f)(1), because the Proponent did not provide the requisite proof of continuous stock ownership in response to Intel's request for that information.
- Rule 14a-8(i)(2) and Rule 14a-8(i)(3), because numerous aspects of the Proposal are contrary to law and to the Commission's proxy rules.
- Rule 14a-8(i)(8), because the Proposal relates to the election of directors.
- Rule 14a-8(i)(10), because the Company has already substantially implemented the Proposal.

We note that the Staff recently granted no-action relief under Rule 14a-8(i)(2) to several companies with respect to stockholder proposals identical to the Proposal. The Staff found that implementing such proposals would result in the companies' proxy materials being false or misleading under Rule 14a-9 where the companies' governing instruments do not opt out of the plurality voting that is otherwise specified under the law of the company's state of incorporation. *See Occidental Petroleum Co.* (avail. Jan. 2, 2003) (Delaware law); *The Coca-Cola Co.* (avail. Jan. 2, 2003) (Delaware law); *Entergy Corp.* (avail. Jan. 2, 2003) (Delaware law). *See also ExxonMobil Corp.* (avail. Dec. 24, 2002) (*Recon.*) (New Jersey law); *Merck & Co., Inc.* (avail. Dec. 17, 2002) (New Jersey law); *Hudson United Bancorp* (avail. Dec. 6, 2002) (New Jersey law). As discussed below, the Company requests that the Staff agree to take no action if the Company excludes the Proposal under Rule 14a-8(i)(2) because (i) the Company is a Delaware corporation, (ii) Delaware corporate law provides that directors shall be elected by plurality vote unless a company's certificate of incorporation or bylaws provide otherwise, (iii) the Company has not adopted any provision in its certificate of incorporation or bylaws to opt out of plurality voting for directors, and (iv) under the laws of Delaware in an election of directors where directors are elected by plurality vote, a vote against a nominee for election as a director has no effect in determining whether a nominee is elected as a director. Accordingly, providing for votes against directors in the Company's proxy would be misleading in violation of Rule 14a-9 of the proxy rules. The Staff may rely upon the foregoing statements regarding Delaware law as an opinion of counsel pursuant to Rule 14a-8(j)(2)(iii) of the Exchange Act. Therefore, the

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 3

Company requests that the Staff's concurrence that the Company may omit the Proposal under Rule 14a-8(i)(2) because the revisions requested by the Proposal would be false and misleading in violation of Rule 14a-9.

## **I. The Proposal May Be Excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Establish the Requisite Eligibility to Submit the Proposal.**

The Company believes that it may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent did not substantiate his eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the stockholder submits] the proposal." The Proponent does not appear on the records of Intel's stock transfer agent as a stockholder of record. The Proponent did not include evidence demonstrating that he satisfied Rule 14a-8(b) with his August 23, 2002 and August 25, 2002 letters to Intel accompanying the Proposal.<sup>1</sup> See Exhibit A. Accordingly, in a letter dated September 6, 2002, which was sent within 14 days of Intel's receipt of the Proposal, Intel informed the Proponent of the requirements of Rule 14a-8(b), stated the type of documents that constitute sufficient proof of eligibility, and indicated that the Proponent's response had to be postmarked within 14 days of his receipt of Intel's letter. Specifically, Intel stated "you must provide a written statement from TD Waterhouse, which is apparently the record holder of your shares, stating that you have continuously held the securities for a year or more as of August 23, 2002." See Exhibit B. Intel's September 6 letter was sent to the Proponent via overnight delivery, and Intel has confirmation from the courier company that the Proponent received the letter on September 9, 2002. In response to that letter, the Proponent provided a copy of a letter from Chris Mukoda, Branch Manager-Vice President of TD Waterhouse, indicating that the Proponent held 200 shares of Intel common stock as of the date of the letter (September 10, 2002).<sup>2</sup> See Exhibit C. This letter does not satisfy the requirement under Rule 14a-8(b) that the Proponent show continuous ownership of the shares for a period of a year, because it states only

---

<sup>1</sup> The Proposal itself was included in the letter dated August 25, 2002, but the cover letter was dated August 23, 2002.

<sup>2</sup> The copy of Mr. Mukoda's letter contained an addendum entitled "Purchases" that appears to have been typed on Mr. Mukoda's letter (it is not clear by whom), and contained a typographical error in one of the amounts. The "Purchases" addendum only indicates the respective dates of the Proponent's two purchases of Intel common stock, and does not affirmatively state or demonstrate continuous ownership as required under Rule 14a-8(b).

## GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 4

that the Proponent owned Intel common stock as of the date of the letter, September 10, 2002, and not that the Proponent had owned the Intel common stock continuously for a year or more.

Although not required under Rule 14a-8, Intel voluntarily sent the Proponent a second letter indicating that Mr. Mukoda's letter did not satisfy the Rule 14a-8(b) proof of ownership requirements as explained in Intel's September 6 letter. *See Exhibit D*; Rule 14a-8(b) and Rule 14a-8(f). Intel's October 7, 2002 letter again cited the text from part C.1.c(2) of Staff Legal Bulletin No. 14 ("SLB 14"), published on July 13, 2001. The Proponent did not respond to Intel's second letter.

Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence that he has satisfied the beneficial ownership requirements of Rule 14a-8(b), but only if the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. Intel satisfied its obligation under Rule 14a-8 through its September 6 letter to the Proponent, which clearly stated:

- the ownership requirements of Rule 14a-8(b)(1),
- the type of documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b)(2)(i) and (ii), and
- that the Proponent's response had to be postmarked within 14 days after his receipt of Intel's letter.

On numerous occasions, the Staff has taken a no-action position concerning a company's omission of stockholder proposals based on a proponent's failure to provide evidence of his eligibility under Rules 14a-8(b) and (f)(1). In fact, the Proponent submitted a substantially identical proposal for inclusion in Intel's 2002 Proxy Materials and at that time the Proponent also failed to satisfy the requirement that he show proof of continuous ownership, notwithstanding Intel's correspondence in which Intel explained those requirements, and the Staff granted no-action relief. *See Intel Corp.* (avail. Feb. 15, 2002). *See also Motorola, Inc.* (avail. Sept. 28, 2001); *Target Corp.* (avail. Mar. 12, 2001); *Saks Inc.* (avail. Feb. 9, 2001); *Johnson & Johnson* (avail. Jan. 11, 2001). Although the Staff has in some instances extended a proponent's correction period beyond 14 days, the Staff has done so only upon finding deficiencies in the company's communication. *See, e.g., Sysco Corp.* (avail. Aug. 10, 2001); *General Motors Corp.* (avail. April 3, 2001) (extending the correction period because the company's notice did not adequately describe the documentation required under Rule 14a-8(b)). In the present case, we do not believe that an extension of the response period is warranted because Intel's September 6 letter notifying the Proponent of his need to present satisfactory evidence supporting his beneficial ownership of Intel's stock fully complied with the requirements of Rule 14a-8(f)(1): Intel furnished the Proponent with all relevant information

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 5

(including the requirements for eligibility, the required documentation and the deadline for response) in the notice of deficiency, and provided the notice in a timely fashion. Furthermore, Intel voluntarily communicated with the Proponent after he had submitted additional inadequate documentation to inform him of the deficiencies in his response to Intel, and providing him again with a description of the documentation needed to demonstrate that he satisfied the requirements of Rule 14a-8(b)(1). Despite these efforts, the Proponent still failed to provide Intel with satisfactory evidence of the requisite beneficial ownership. Accordingly, we believe that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

## **II. The Proposal and Supporting Statement Violate the Proxy Rules.**

We believe that the Company may exclude the Proposal from the 2003 Proxy Materials pursuant to Rule 14a-8(i)(3) because implementing the Proposal would violate the Commission's proxy rules, including Rule 14a-4(b)(2), which specifies the means that must be provided on a proxy to permit stockholders to withhold authority to vote for nominees, Rule 14a-4(b)(1) and Rule 14a-4(c)(1), which limit a company's ability to exercise discretionary voting authority and require certain statements to be made with respect to discretionary voting authority, and Rule 14a-9, which prohibits materially false or misleading statements.

In SLB 14, the Staff stated that "when a proposal and supporting statement will require detailed and extensive editing in order to bring them into compliance with the proxy rules, [the Staff] may find it appropriate for companies to exclude the entire proposal, supporting statement, or both, as materially false or misleading." Requiring the Staff to spend large amounts of time reviewing proposals "that have obvious deficiencies in terms of accuracy, clarity or relevance . . . is not beneficial to all participants in the [stockholder proposal] process and diverts resources away from analyzing core issues arising under rule 14a-8 . . . ." As set forth below, because the Proposal has numerous elements that violate the Commission's proxy rules, we believe that the entire Proposal, including the supporting statement, is excludable.

### **A. The Proposal May Be Excluded under Rule 14a-8(i)(2) and Rule 14a-8(i)(3) Because it is Contrary to Rule 14a-4(b)(2), Federal Law, and the Proxy Rules.**

The first prong of the Proposal (for ease of reference, referred to herein as the "Director Voting Proposal") requests that Intel revise its "Proxy Material" to "[r]emove the word "EXCEPT" and re-apply the word "AGAINST" in the Vote For Directors column." Rule 14a-8(i)(2) permits the omission of a stockholder proposal if implementing the proposal would cause the company to violate any federal law to which it is subject. Rule 14a-8(i)(3) permits the omission of a stockholder proposal when the proposal or supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9. Rule 14a-9 provides that no solicitation may be made by means of a communication containing

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 6

any statement "which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or which omits to state any material fact necessary in order to make the statements therein not false and misleading." The Director Voting Proposal may be excluded under Rules 14a-8(i)(2) and 14a-8(i)(3) because it is inconsistent with Rule 14a-4(b)(2) and it contains false and misleading statements.

1. The Director Voting Proposal May be Excluded under Rule 14a-8(i)(2) and Rule 14a-8(i)(3) Because it is Inconsistent with Rule 14a-4(b)(2).

As permitted by Rule 14a-4(b)(2), Intel's proxy card provides that a stockholder may (1) withhold authority to vote for all director nominees by checking the "Withhold All" box, or (2) withhold authority to vote for certain director nominees by checking the "For All Except" box and indicating those director nominees for which the stockholder wishes to withhold his or her vote. While the precise consequence of implementing the Director Voting Proposal is unclear,<sup>3</sup> the Director Voting Proposal, if implemented, would seem to require that the Company eliminate the "For All Except" language on the proxy card and replace it with language permitting votes "against" a director nominee. However, this type of revision to the proxy card is contrary to the requirements of Rule 14a-4(b)(2), which requires that a company's proxy card provide a means for withholding authority to vote for each nominee.

The Commission has acknowledged that Rule 14a-4(b)(2) allows only for withholding of votes (and not for votes directed "against" a director nominee) because the corporate law of most states does not give legal effect to an "against" vote in the election of directors.

"As adopted, rule 14a-4(b)(2) has been revised to delete the specific requirement of a for and against vote for individual nominees. Instead, the rule provides that the form of proxy shall clearly provide one of several designated methods for security holders to withhold authority to vote for each nominee." *Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally*, Exchange Act Release No. 16356 at 11 (Nov. 21, 1979), 18 SEC Docket 997, 999 (No. 16, December 4, 1979).

---

<sup>3</sup> Applied literally, the Director Voting Proposal would result in the proxy card carrying the confusing statement, "For All AGAINST."

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 7

Instruction 2 to Rule 14a-4(b)(2) reiterates that a company may provide a means for stockholders to vote against each nominee instead or in lieu of providing a means for withholding votes, *only* if applicable state law gives legal effect to votes cast against a nominee.<sup>4</sup>

In elections of directors, Delaware gives no effect to votes "against" a nominee. Section 216 of the Delaware General Corporation Law, as amended (the "DGCL"), states that, unless provided otherwise in a particular corporation's certificate of incorporation or bylaws, "[d]irectors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors . . . ." Intel is a Delaware corporation, and is therefore subject to Delaware law. Neither Intel's certificate of incorporation nor Intel's bylaws opts out of the plurality voting specified by Delaware law. *See Exhibit E* and *Exhibit F*. Instead, Intel's Bylaws provide in Article II, Section 1 that "the directors shall be elected by a plurality vote of the shares represented in person or by proxy, at the stockholders annual meeting in each year and entitled to vote on the election of directors". Indeed, in Intel's 2002 Proxy Materials, Intel stated: "The 11 candidates for election as directors who receive the highest number of affirmative votes will be elected." Under plurality voting, nominees for director who receive the greatest number of favorable votes are elected. Even if a greater number of votes were voted against the election of a particular nominee than were voted for his or her election, that nominee would nonetheless be elected so long as the votes for his or her election exceeded the number of votes cast in favor of the other nominees. As a consequence, a vote "against" a director has no legal effect. The Staff may rely upon the foregoing statement regarding Delaware law as an opinion of counsel pursuant to Rule 14a-8(j)(2)(iii) of the Exchange Act. Therefore, the provision of Note 2 to Rule 14a-4(b)(2), which would allow provision for "against" votes, is not available with respect to Intel. Accordingly, implementing the Director Voting Proposal would result in a violation of law and the proxy rules, and therefore is contrary to Rule 14a-8(i)(2) and Rule 14a-8(i)(3), because it would result in the Company inserting language on its proxy card that does not satisfy Rule 14a-4(b)(2) and that is not given effect under state law.

## 2. The Director Voting Proposal May Be Excluded Under Rules 14a-8(i)(2) and 14a-8(i)(3) Because it is False and Misleading in Violation of Rule 14a-9.

Providing stockholders with a proxy card indicating that the stockholder may vote "against" a director in a jurisdiction where such votes are not given legal effect would likely mislead stockholders into believing that a vote "against" a director would be given effect in the vote tabulation. In discussing 14a-4(b)(2) and the operation of state corporate laws, as discussed

---

<sup>4</sup> See Exchange Act Rel. No. 16356, at 12, citing *Strong v. Fromm Laboratories, Inc.*, 77 N.W.2d 389 (Wis. 1956).



# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 8

above, the Commission has recognized that an "against" vote may have no legal effect and therefore could be confusing and misleading to stockholders. *See Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally*, Exchange Act Release No. 16356, at 12 (cited above). As stated above, for Intel, a vote "against" a director has no legal effect under Delaware law. The Staff may rely upon the foregoing statement regarding Delaware law as an opinion of counsel pursuant to Rule 14a-8(d) of the Exchange Act. Therefore, Intel proxy cards containing an "against" line for director votes could be false and misleading in violation of 14a-9.

In two recent no-action letters, *Lucent Technologies, Inc.* (avail. Nov. 18, 2002) ("Lucent") and *The Coca-Cola Co.* (avail. Feb. 6, 2002) ("Coca Cola"), the Staff recommended no action if Coca Cola and Lucent excluded proposals under Rule 14a-8(i)(2) that were identical to the Director Voting Proposal on the grounds that they contained false and misleading statements as to the legal effect of an "against" vote. In *Lucent*, the Staff stated that there was a basis for the "view that Lucent may exclude the proposal under rule 14a-8(i)(2). . . . [B]ecause Lucent's governing instruments do not opt out of the plurality voting that is otherwise specified by Delaware law, it appears that implementation of the proposal would result in Lucent's proxy materials being false or misleading under rule 14a-9. Accordingly, we will not recommend enforcement action to the Commission if Lucent omits the proposal from its proxy materials in reliance on rule 14a-8(i)(2)." In *Coca Cola*, the Staff stated an identical rationale in concurring that a proposal could be excluded: that implementation of the proposal would result in Coca Cola's proxy materials being false or misleading under rule 14a-9 because Coca-Cola had not opted out of the plurality voting otherwise specified in Delaware law. In both *Lucent* and *Coca Cola*, the companies were organized under Delaware law. The company in *Coca Cola*, furthermore, by way of a supporting legal opinion, indicated that Section 216 of the DGCL provides that a corporation's directors are elected by a plurality of votes cast unless otherwise provided in a corporation's charter or by-laws. Because Coca Cola had not opted out of this plurality voting requirement, a vote against a nominee for election as director would have no effect in determine whether a nominee is elected as a director.

Similarly, in *AT&T Corp.* (avail. Mar. 11, 2002) ("AT&T"), the Staff followed its decision in *Coca Cola* and under Rule 14a-8(i)(2) and concurred in the exclusion of a proposal that was substantially identical to the proposals in *Lucent* and *Coca Cola* and to the Director Voting Proposal. As in *Lucent* and *Coca Cola*, the Staff in AT&T concluded that as "AT&T's governing instruments do not opt out of the plurality voting that is otherwise specified by [state] law . . . it appears that implementation of the proposal would result in AT&T's proxy materials being false or misleading under rule 14a-9." The Staff's decision was based on a reconsideration request for omission made by the company due to the recent *Coca Cola* no-action precedent. Although the Commission did not rely on Rule 14a-8(i)(3) in *Lucent*, *Coca Cola* and *AT&T* in its no-action recommendation, the proposals were also excludable as contrary to 14a-8(i)(3), inasmuch as a violation of Rule 14a-9 not only implicates a violation of law, rendering the

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 9

proposals in question excludable under Rule 14a-8(i)(2), but also implicates a violation of the Commission's proxy rules. We believe that the Proposal is also excludable under Rule 14a-8(i)(3).

Furthermore, the Staff has also concurred that registrants may omit stockholder proposals that, if implemented, would have required a company to provide for stockholders to vote against director nominees. *See Niagara Mohawk Power Corp.* (avail. Mar. 11, 1993); *First Empire State Corp.* (avail. Jan. 26, 1978). In both *Niagara Mohawk Power Corp.* and *First Empire State Corp.*, stockholder proposals sought revisions to the company's proxy materials to allow stockholders to vote against director nominees. In *Niagara Mohawk Power Corp.*, the omitted stockholder proposal sought to revise the company's proxy card such that stockholders would have the option to vote against director nominees rather than withholding their vote. In *First Empire State Corp.*, the omitted stockholder proposal urged management to "take all necessary steps so that future proxy solicitations by the management offer Stockholders a choice; For or Against every single item up for ratification by the Stockholders." *See also Visteon Corporation* (avail. Feb. 20, 2002) (permitting exclusion of a substantially identical proposal, and noting that Delaware law gives no legal effect to votes "against" a director.)

The Director Voting Proposal seeks a similar change to Intel's proxy card and therefore implementing the Director Voting Proposal would require Intel to follow a procedure that the Commission has rejected as misleading to stockholders. Intel would be required to format its proxy card in a manner inconsistent with Rule 14a-4(b)(2) and its proxy card would be misleading because it would give stockholders the misimpression that "against" votes would have an effect on the outcome of the election. This result would contravene Rule 14a-9, as the Staff recognized in *Lucent*, *Coca Cola*, and *AT&T*. Accordingly, Intel believes that the Director Voting Proposal should be excluded from the Proxy Materials pursuant to the recent, and virtually identical, *Lucent*, *Coca Cola* and *AT&T* no-action precedents and Rule 14a-8(i)(2) and Rule 14a-8(i)(3).

**B. The Proposal May Be Excluded under Rule 14a-8(i)(3) and Rule 14a-8(i)(6) Because it is Vague and Misleading in Violation of Rule 14a-9, And Because it is Inconsistent with Rule 14a-4.**

The Director Voting Proposal and the second prong of the Proposal (for ease of reference, referred to herein as the "Discretionary Voting Proposal") requests that Intel revise its "Proxy Material" to "Remove the statement [if applicable] placed in the lower section announcing that all signed proxies but not voted as to choice will be voted at the discretion of Management." The Discretionary Voting Proposal also includes a statement (for ease of reference, referred to herein as the "Rules Statement") that asserts, "The proxy is the property of stockholders, and must not be confiscated, regardless of Corporate statements of Rules of Incorporation or State Rules. Rules are NOT laws!" The Director Voting Proposal and the

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 10

Discretionary Voting Proposal, including the Rules Statement, are excludable under Rule 14a-8(i)(3) (as well as Rule 14a-8(i)(6)) because:

- The Director Voting Proposal maintains that an "AGAINST" vote is a viable method of withholding authority to vote for each nominee, which, as explained in Section A above, is inaccurate and misleading;
- The Discretionary Voting Proposal is vague and misleading within the meaning of Rule 14a-9, and
- The Discretionary Voting Statement appears to seek the removal of statements required under Rule 14a-4(b)(1) and Rule 14a-4(c)(1), which limit a company's ability to exercise discretionary voting authority and require certain statements to be made with respect to a company's limited ability to vote proxies on certain matters.

1. Background on Rule 14a-8(i)(3) and Rule 14a-8(i)(6).

Rule 14a-8(i)(3) permits the exclusion of a security holder proposal and any supporting statement "if the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9, which prohibits materially false and misleading statements in proxy soliciting materials." Rule 14a-9 provides that no solicitation may be made by means of a communication containing any statement "which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or which omits to state any material fact necessary in order to make the statements therein not false and misleading."

The Staff has determined that a proposal is misleading and therefore excludable when the proposal fails to address essential aspects of implementation. A proposal is sufficiently vague and indefinite to justify its exclusion where "neither the shareholders voting on the proposal, nor the Company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." *Philadelphia Electric Co.* (avail. July 30, 1992) (proposal provided for the election of a committee of stockholders with limited number of shares to advise the company's board of directors). *See also Organogenesis, Inc.* (avail. Jan. 28, 1999) (proposal requiring the number of directors to be expanded so that there would always be a majority of non-management directors was properly excludable because the manner of implementing the proposal was sufficiently vague and ambiguous).

In addition, a proposal is excludable pursuant to Rule 14a-8(i)(6) when it is so vague and ambiguous that the company "would lack the power or authority to implement" it. A company "lack[s] the power or authority to implement" a proposal when the proposal "is so vague and

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 11

indefinite that [the company] would be unable to determine what action should be taken." *International Business Machines Corp.* (avail. Jan. 14, 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the Board of Directors or the stockholders at large to comprehend precisely what the proposal would entail.").

2. The Discretionary Voting Proposal is Vague and Indefinite in its Application and Outcome, in Violation of Rule 14a-8(i)(3) and Rule 14a-8(i)(6).

The Proposal is excludable under Rule 14a-8(i)(3) (and Rule 14a-8(i)(6)) because it is so vague and indefinite in its application and outcome that Intel would be unable to determine with any reasonable certainty what action should be taken to implement it. The Proposal is vague because Intel's past proxy materials do not actually contain the statement that the Discretionary Voting Proposal seeks to remove and Intel does not intend to include this statement in its 2003 Proxy Materials. Instead, Intel's proxy materials contain two different statements that limit Intel's ability to vote proxies with respect to certain matters. As discussed below, these two statements are required under Rule 14a-4(b)(1) and Rule 14a-4(c)(1), to state the manner in which Intel intends to vote proxies in specified situations. From the Discretionary Voting Proposal and the Proposal as a whole, it is impossible to ascertain whether the Proponent intended for the Discretionary Voting Proposal to cover the removal of one or the other of these statements from the proxy card, or intended to address an entirely different situation. Therefore, a stockholder voting on the Discretionary Voting Proposal would not be able to determine with any reasonable certainty exactly what action or measures Intel would take in the event the Discretionary Voting Proposal were approved, and Intel would not know how to implement the Discretionary Voting Proposal, particularly in light of the statements required to satisfy Rule 14a-4(b)(1) and Rule 14a-4(c)(1).

In addition to being vague because of its unclear application, the Discretionary Voting Proposal is false and misleading because it inaccurately and falsely suggests that Intel's proxy materials operate in a specified manner. The first concept implicated by the Discretionary Voting Proposal is addressed in Rule 14a-4(b), which states that in order for a company to vote shares represented by a proxy that is signed but unmarked, the company must state on its proxy card "in boldface type how it is intended to vote the shares represented by the proxy." Pursuant to this rule, Intel's proxies have contained a statement specifying how signed but unmarked proxies will be voted. For example, Intel's proxy card for its 2002 annual meeting stated, "[s]hares represented by this Proxy will be voted as directed by the stockholder. If no such directions are indicated, the Proxies will have authority to vote FOR Item 1 (Election of Directors) and FOR Item 2 (Ratification of Appointment of Independent Auditor)." The Discretionary Voting Proposal suggests that Intel has discretion as to how to vote signed but unmarked proxies. However, as required by Rule 14a-4(b), Intel has no discretion and can only vote such signed and unmarked proxies as Intel indicates in its proxy, whereas if a proxy is

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 12

signed and marked only as to specific items, Intel only has discretion as to the unmarked items, and then only as Intel indicates in its proxy. If a proxy is signed and marked, then as required under Rule 14a-4(c), the matters on which Intel has discretion to vote the proxy are specifically enumerated and only relate to minor and incidental matters. Thus, contrary to what the Discretionary Voting Proposal suggests, Intel's proxy cards do not state that signed but unmarked cards will be voted in management's discretion but instead, as required by the proxy rules, specify exactly how such shares will be voted on each item included on the stockholder meeting agenda.

The second concept implicated by the Discretionary Voting Proposal is the requirement under Rule 14a-4(c)(1) that to be able to exercise voting authority on matters as to which a company did not receive advance notice, a specific statement to that effect must be set forth in the proxy statement or form of proxy. However, Intel's proxies have contained statements that Intel is permitted to exercise discretion only on matters not included on the proxy card. In Intel's 2002 Proxy Materials, for example, Intel stated: "In their discretion, the Proxies are authorized to vote upon such other business as may properly come before the meeting." Thus, contrary to what is suggested by the Discretionary Voting Proposal, Intel's proxy cards do not state that it has authority to exercise discretionary voting authority whenever voting instructions are not marked on the card, but instead reflects the fact that by satisfying the requirement that its proxy materials contain a statement to such effect, Intel is permitted to exercise discretion only on matters not included on the proxy card.

### 3. The Rules Statement is Vague and Misleading, in Violation of Rule 14a-8(i)(3) and Rule 14a-8(i)(6).

The Company believes that the Rules Statement, which follows the Discretionary Voting Proposal, may be excluded under Rule 14a-8(i)(3) as false and misleading. The Rules Statement asserts that the proxy is the property of stockholders, and seems to imply that management will "confiscat[e]" this property right if the Proposal is not included in the Company's 2003 Proxy Materials. This is misleading because the proxy does not, in fact, represent a property right. Regulation 14A-1 describes a proxy in the context of consent or authorization, including failure to object or to dissent, while under the DGCL, Section 212, a proxy is a means whereby "[e]ach stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder." The proxy does not confer a property right but instead provides a method for delegating authority to vote. Incorrectly describing the proxy as a property right would likely confuse and mislead stockholders in violation of the Commission's proxy rules.

The Proponent's allegation that management's exercise of the proxy "confiscate[s]" a property right, is also misleading within the meaning of 14a-9 because it sets forth unfounded accusations of improper conduct by the Company. As further described in Section C of this

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 13

letter, below, note (b) to Rule 14a-9 states that "misleading" material includes that which "[d]irectly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." The Proponent's Rules Statement inaccurately describes the proxy as a property right and implies that management has "confiscated" this putative property right by including the statements—required under Rule 14a-4(b)(1) and Rule 14a-4(c)(1)—to which the Discretionary Voting Proposal relates.

Furthermore, in support of his contention, the Proponent makes an unsupported and vague distinction between rules, on the one hand, and laws, on the other, and suggests that management has justified the "confiscation" with reliance on "rules." Specifically, the Proponent refers to "Rules of Incorporation and State Rules," neither of which are defined in either the DGCL or the federal securities laws, and implies that these are lesser authorities than "laws." To the extent that "Rules of Incorporation" and "State Rules" refer to Intel's Certificate of Incorporation and the Delaware laws, the subsequent statement that "Rules are NOT laws!" appears to be an accusation that Intel has misstated the applicability of state law or the provisions of its Certificate of Incorporation in order to "confiscat[e]" the proxy. While it is true that the specific provisions of Intel's Certificate of Incorporation are not themselves laws of general application, they have been adopted pursuant to law, and Intel is legally bound to abide by its Certificate of Incorporation, as well as by Delaware laws. In addition, because Intel has invoked the Commission's rules in excluding the Proposal from the Proxy Materials, the Proponent seems to be challenging the Commission's rules and suggesting that it is inappropriate for Intel to rely on Rule 14a-4 or other parts of Regulation 14A. Because the Commission's rules and Delaware law are both law, and Intel is bound to follow both, the Proponent's statement is false and misleading. To imply that Intel is either violating the law or incorrectly using "rules" to justify improper behavior that would be prevented by "laws" is misleading, as set forth in note (b) to Rule 14a-9, discussed above. To the extent that the Proponent means that Intel may not rely on its Certificate of Incorporation, state law, or the Commission's rules in voting proxies, the Proponent does not provide an alternative authority that Intel should follow. Taken as a whole, therefore, the Rules Statement is vague, misleading and, in addition, is so vague and ambiguous that it is not clear what action Intel should take in response. The Rules Statement is therefore excludable under Rule 14a-8(i)(3) and Rule 14a-8(i)(6).<sup>5</sup>

---

<sup>5</sup> Although, under SLB 14, statements excludable under Rule 14a-8(i)(6) can be amended, this power to amend is the same as the power to amend proposals excluded under Rule 14a-8(i)(2). Under 14a-8(i)(2), amendments are relevant only where a proposal relates to a breach of existing contracts and the proposal can be revised to apply only to future contracts. As neither existing nor future contracts are implicated in the Proposal, no such revision is appropriate.

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 14

As discussed above, the Discretionary Voting Proposal (with its supporting Rules Statement) has a number of faults that justify exclusion of the Proposal under Rule 14a-8(i)(3). First, it is vague and misleading in violation of Rule 14a-9. A stockholder voting on the Discretionary Voting Proposal would not be able to determine with any reasonable certainty exactly what action or measures Intel would take in the event the Discretionary Voting Proposal was approved.<sup>6</sup> To the extent that the Discretionary Voting Proposal appears to seek the removal of certain statements included in Intel's proxy materials, the removal of those statements is inconsistent with Rule 14a-4(b)(1) and Rule 14a-4(c)(1), which require that Intel state how it intends to treat executed proxies as to certain matters. Although the Rules Statement does not clearly call for stockholder action, it apparently accuses management of improper confiscation of a (nonexistent) property right and also suggests that management has somehow been misstating the legal framework by which it is bound in order to achieve this confiscation. Therefore, the Discretionary Voting Proposal (with its supporting Rules Statement) may be excluded pursuant to Rule 14a-8(i)(3).

**C. Because the Supporting Statement is False And Misleading in Violation of Proxy Rule 14a-9, the Company May Exclude the Proposal in its Entirety under Rule 14a-8(i)(3).**

We also believe that the Company may properly omit the Proposal from the 2003 Proxy Materials pursuant to Rule 14a-8(i)(3) because the Proposal contains statements that violate the proxy rules, including Rule 14a-9 which prohibits materially false and misleading statements in proxy solicitation materials. As discussed above, Rule 14a-9 provides that no solicitation may be made by means of a communication containing any statement "which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact or which omits to state any material fact necessary in order to make the statements therein not false and misleading." Note (b) to Rule 14a-9 states that "misleading" material includes that which "[d]irectly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation." Specifically, unfounded assertions representing the unsubstantiated personal opinion of a stockholder have long been viewed as excludable under this provision. *See, e.g., Detroit Edison Co.* (avail. Mar. 4, 1983) (statements implying company engaged in improper "circumvention of . . . regulation" and "obstruction of justice" without factual foundation provided a basis for excluding the proposal under former Rule 14a-8(c)(3)) and *MascoTech, Inc.* (avail. April 3, 2000) (statement that "[t]urnover [of directors] reduces the possibility of inbreeding—so prevalent historically at Masco companies—and provides sources of new ideas, viewpoints, and approaches" could be omitted under Rule 14a-8(i)(3)). As

---

<sup>6</sup> As noted above, this also justifies exclusion under Rule 14a-8(i)(6).

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 15

discussed above with respect to the Director Voting Proposal, the Discretionary Voting Proposal and its supporting Rules Statement, and as discussed below with respect to the supporting statement, in light of the numerous ways in which the Proposal is false and misleading, it is appropriate to exclude the entire Proposal.

## 1. The Proposal Impugns Intel's Management in Violation of Rule 14a-9.

The Proposal contains several unsupported, false and misleading assertions that Intel is acting improperly. First, the Proposal claims that the format of Intel's proxy materials is "unfair": "[t]his entirely unfair voting arrangement has benefited Management and Directors in their zeal for re-election and determination to stay in office by whatever means." Second, the Proposal states that "Management's claiming votes of signed but unmarked proxy choice is unfair, as a shareowner has the right to sign as 'Present' and not voting, showing receipt of material and only desiring to prevent further solicitation of a vote." Finally, the Proposal alleges that the Company's directors have engaged in a practice of paying "excessive remuneration for Management." These statements are false and misleading in several respects. The Proponent's first statement regarding management's "zeal" suggests that Intel's management and Board of Directors have somehow acted unscrupulously in an attempt to stay in office. The second statement, relating to "[m]anagement's claiming [of] votes" suggests that management is somehow improperly taking voting control of stockholders' shares. The third statement clearly maintains that the Company's management is being improperly overpaid. The Proponent provides no supporting evidence for any of these allegations, which are, at most, the Proponent's opinions. The first statement is merely an accusation without factual basis and impugns management's character in violation of 14a-9. With respect to the second statement, as discussed above, Intel only votes signed but unmarked proxies in the manner which it clearly discloses, as required under Rule 14a-4(b), and implements clearly disclosed voting instructions. Finally, with respect to the claim that the Company's management receives excessive compensation, the Company believes that its management team is compensated at market levels consistent with many of its competitors. These statements all impugn Intel's management without factual foundation and are therefore all false and misleading in violation of Rule 14a-9.

## 2. The Proposal Mischaracterizes the Proxy Materials.

Several of the Proponent's statements in the Proposal mischaracterize the Proxy Materials, making the Proposal even more false and misleading. First, the Proponent's statement suggests that stockholders do not currently have "the right to sign as 'Present' and not voting." On the contrary, the proxy card provides stockholders an opportunity to withhold votes on the election of directors and to abstain from voting on each other agenda matter. Thus, Intel's proxy materials do in fact effectively provide a means for a stockholder to "sign as 'Present' and not voting." As a result, the Proposal's statement suggesting otherwise is both false and misleading in violation of Rule 14a-9. Second, the Proposal declares that "Management claims the right to



# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 16

advise an 'Against' vote in matters presented by shareowners. The shareowners likewise have the right to ask for a vote 'AGAINST' all Company select nominees for Director, until directors stop the practice of excessive remuneration for Management other than base pay and some acceptable perks." This statement is false and misleading in at least two respects. As discussed above, Rule 14a-4(b)(2) does not contemplate any method by which a stockholder may vote against the election of a director nominee when a company is incorporated in a state that does not give legal effect to "against" votes in the election of directors, and this is the case with Intel, a Delaware corporation. Thus, under both state law and the proxy rules, there is no "right" to vote against director nominees. Second, as further discussed below, under Rule 14a-8(i)(8), the Proponent does not have the right to use Rule 14a-8 to solicit votes against Intel's director nominees and therefore the Proposal's suggestion that he has this right is both false and misleading.

The Proposal is a prime example of the situation identified in SLB 14 where, because of the number of ways in which the Proposal violates the proxy rules, "extensive editing" of the proposal would be necessary to bring it "into compliance with the proxy rules." Because of the extensive deletions and revisions necessary to correct the numerous misstatements, vague statements, and unsubstantiated false and misleading statements, and the lack of substance remaining when those statements are removed, we believe that the Proposal is excludable in its entirety.

### **III. Under Rule 14a-8(i)(8), the Company May Exclude the Proposal because it Relates to the Election of Directors.**

Pursuant to Rule 14a-8(i)(8), the Company believes that it may exclude the Proposal from the 2003 Proxy Materials because the Proposal requests that the Company include in its proxy materials a stockholder's solicitation for votes against the company's director nominees. Rule 14a-8(i)(8) allows a company to exclude a stockholder proposal when the proposal "relates to an election for membership on the company's board of directors or analogous governing body." The Commission has stated that "the principal purpose of [paragraph (i)(8)] is to make clear, with respect to corporate elections that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature, since the proxy rules, including Rule 14a-11, are applicable." SEC Release No. 34-12598 (July 7, 1976).

The Proposal clearly seeks to solicit votes against Intel's nominees for directors. The text of the Proposal seeks to have Intel provide a column in its proxy materials by which its stockholders may vote against Intel's director nominees. This intent is reiterated by the Proponent's statement in support of the Proposal, which asserts that "[t]he Shareowners likewise have the right to ask for a vote 'AGAINST' all Company select nominees for directors . . . ."

In this respect, the Proposal is comparable to those addressed in recent Staff interpretations seeking to require a company to furnish proxy advisory firm voting

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 17

recommendations in the company's proxy materials. These letters recognize that, as a result of recent technological changes, reduced regulation of proxy solicitations and other developments which have promoted communications among stockholders, non-traditional election contests may arise even with respect to director nominations submitted by a company's board. If a proxy advisory proposal were implemented, from time to time the third-party advice would include a recommendation to vote against one or more of the management's candidates. The dissemination of such advice contrary to management's recommendations would amount to an "election contest" in opposition to board nominees, circumventing Rule 14a-12(c) and the other proxy rules governing election contests, which are designed to protect stockholders by imposing disclosure obligations and other procedural safeguards when a stockholder solicits against the company's board nominees. Consequently, on multiple occasions within the last two years, the Staff has concurred that proxy advisory proposals relate to the election of directors and therefore may be omitted from proxy material under Rule 14a-8(i)(8). *See, e.g., Lipid Sciences, Inc.* (avail. May 2, 2002); *Exxon Mobil Corp.* (avail. Mar. 20, 2002); *AT&T Corp.* (avail. Mar. 11, 2002) (apparently relating to a similar stockholder proposal submitted by the Proponent to AT&T); *Cirrus Logic, Inc.* (avail. July 18, 2000); *Gillette Co.* (avail. Feb. 25, 2000); *Bristol-Myers Squibb Co.* (avail. Feb. 24, 2000); *Citigroup Inc.* (avail. Feb. 24, 2000); *Warner-Lambert Co.* (avail. Feb. 24, 2000); *Equus II Inc.* (avail. Feb. 24, 2000); *Pfizer, Inc.* (avail. Feb. 22, 2000). Similarly, the Proponent seeks to foster votes against Intel's board nominees. The Proposal does not relate to Intel's general solicitation process, but instead specifically addresses voting on its nominees at Intel's annual meetings. Because the Proposal's stated purpose is to generate votes in opposition to the Company's director nominees, we believe it is excludable under Rule 14a-8(i)(8).

#### **IV. Under Rule 14a-8(i)(10), the Company May Exclude the Proposal because it has been Substantially Implemented.**

The Director Voting Proposal is moot because Intel's existing proxy card and a proxy card as revised by the Director Voting Proposal would produce the identical result in determining which director nominee is elected to Intel's board. Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal if it has been rendered moot because a company has already substantially implemented the proposal. The Staff has indicated that for a proposal to be omitted as moot under this rule, it need not be implemented in full or precisely as presented. The applicable standard under the rule is one of substantial implementation. *See Release No. 34-20091* (August 16, 1983).

The Director Voting Proposal seeks to change the proxy card by removing the word "except" and replacing it with the word "AGAINST" in the section addressing the vote for directors. As previously discussed, Intel is a Delaware company, and as explained above, because Intel's certificate of incorporation and bylaws do not opt out of the Delaware laws provision for plurality voting for directors, a vote "against" a director has no effect under the

# GIBSON, DUNN & CRUTCHER LLP

Office of the Chief Counsel  
Division of Corporation Finance  
January 13, 2003  
Page 18

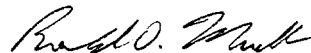
Delaware laws. As a result, regardless of whether the proxy card contains the word "except" or the word "against," the same directors would be elected, creating an identical result.

Intel therefore believes that the Director Voting Proposal may also be excluded under Rule 14a-8(i)(10) because the outcome if the word "against" were to be substituted for the word "except" would be identical, and therefore the Proposal has already been substantially implemented.

\*\*\*

Based upon the foregoing analysis, we respectfully request that the Staff take no action if Intel excludes the Proposal of Robert D. Morse from its 2003 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Should you disagree with the conclusions set forth in this letter, we respectfully request the opportunity to confer with you prior to the determination of the Staff's final position. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Rachel Kosmal from the Intel Legal Department at (408) 765-2283.

Sincerely,



Ronald O. Mueller

Attachments:

cc: Rachel Kosmal, Intel Corporation  
Robert D. Morse

---

## **EXHIBIT A**

### **SHAREHOLDER PROPOSAL BY ROBERT D. MORSE**

Office of the Secretary  
Intel Corporation  
2200 Mission College Boulevard  
Santa Clara, CA 95052-8119

Robert D. Morse  
212 Highland Avenue  
Moorestown, NJ 08057-2717

Ph: 856 235 1711  
August 23, 2002

Dear Secretary:

I wish to enter a proposal for the Year 2003 Proxy Material.

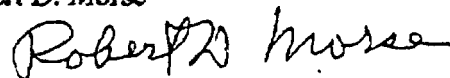
I have over \$2000.00 stock equity, and have held same over one year. Also, I plan to be personally or represented at the meeting. There could well be offers after proxy delivery.

My request has been omitted on some previous offerings due to non-attendance at meetings. However, the SEC Rules of 1934, as amended, permit publication if the proponent has a valid reason for non-representation or appearance at the meeting. It is my contention that travel to the designated meeting is a problem for an elderly person, expensive, only to repeat the request in the short time allotted to speak, after hours of travel, and only a percentage of stockholders personally attending and maybe listen and vote "FOR". Management has their expenses paid by the Company, and there is no remuneration for a proponent. Therefore, the "attendance by proponent rule" is exclusionary and benefits a Corporation unfairly.

Thank you for your interest.

Enclosures

Robert D. Morse

A handwritten signature in black ink that reads "Robert D. Morse". The signature is written in a cursive style, with the first name "Robert" and last name "Morse" clearly legible.

Office of the Secretary  
Intel Corporation  
2200 Mission College Boulevard  
PO Box 58119  
Santa Clara, CA 95052-8119

Robert D. Morse  
212 Highland Avenue  
Moorestown NJ 08057-2717

Ph: 856 235 1711  
August 25, 2002

Dear Secretary:

First, I would like to clear the matter of "proof of ownership for one year" as suggested back as far as October 11, 2001. [exhibits encl.] Causing a broker to supply me, or you, a written statement verification other than the monthly ones I receive is strictly an intended "nuisance procedure" to dissuade a stockholder and should not be engaged in by a reputable company. I also enclose current copy still in registry form.

I, Robert D. Morse, 212 Highland Avenue, Moorestown, NJ 08057-2717, holder of over \$2000.00 value in Company stock, wish to enter the following proposal for the Year 2003 Proxy Material. I intend to hold stock until beyond the meeting, as required.

#### PROPOSAL

Management and Directors are requested to change the format of the Proxy Material. This is a single proposal and includes the voting card, noting WHAT to change.

Remove the word "EXCEPT" and re-apply the word "AGAINST" in the Vote For Directors column. Remove the statement [if applicable] placed in the lower section announcing that all signed proxies but not voted as to choice will be voted at the discretion of Management. The proxy is the property of stockholders, and must not be confiscated, regardless of Corporate statements of Rules of Incorporation or State Rules. Rules are NOT laws!

#### REASONS:

Shareholders have been denied a vote "AGAINST" Directors for many years, benefiting Management and Directors in their zeal for re-election and determination to stay in office by whatever means. This is the only area in which an "AGAINST" choice is omitted. Likewise, Management's claiming votes of signed but unmarked proxy choice is unfair, as a shareowner has the right to sign as "Present" and not voting, showing receipt to prevent further solicitation of a vote.

#### FURTHER:

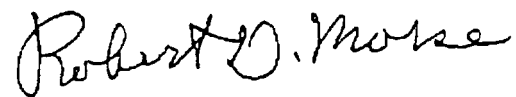
Management claims the right to advise an "Against" vote in matters presented by shareowners. The shareowners likewise have the right to ask for a vote "AGAINST" all

Page Two

company select nominees for Director, until directors stop the practice of excessive extra remuneration for Management other than base pay and some acceptable perks.

Thank you,

Robert D. Morse

A handwritten signature in cursive script that reads "Robert D. Morse". The signature is written in dark ink and is positioned below the typed name.



WATERHOUSE

TD Waterhouse Investor Services, Inc.  
Member NYSE/SIPC  
100 Wall Street  
New York, NY 10038-1701  
www.tdwaterhouse.com

# ACCOUNT STATEMENT

ACCOUNT NO. CUSTOMER NAME PERIOD ENDING PAGE  
ROBERT D MORSE 03/30/2001 2 OF 3

THIS PERIOD		YEAR-TO-DATE	THIS PERIOD		YEAR-TO-DATE
MONEY MARKET INTREST			MARGIN INTEREST PAID		
TAXABLE DIVIDENDS	\$23.70	\$121.47	DIVIDENDS CHARGED		
NON-TAXABLE DIVIDENDS			ACCURED INT ON PURCHASES		
TAXABLE BOND INTEREST					

## MONTHLY ACTIVITY - INFORMATION TO BALANCE YOUR ACCOUNT

DEBITS		CREDITS	
SECURITIES PURCHASED	\$ 7,004.25	SECURITIES SOLD	\$ 0.00
DIVIDEND/INTEREST CHARGED	0.00	DIVIDEND/INTEREST INCOME	23.70
MONEY MARKET FUNDS PURCHASED	23.70	MONEY MARKET FUNDS SOLD	7,004.25
TOTAL DEBITS	\$7,027.95	TOTAL CREDITS	\$7,027.95
OPENING BALANCE \$0.00 + NET ACTIVITY \$0.00 = CLOSING BALANCE BROKERAGE ACCOUNT \$0.00			

## MONTHLY ACTIVITY BY ABOVE CATEGORY

ACCT	DATE	ENTRY	DESCRIPTION	QUANTITY	PRICE	DEBIT	CREDIT
CASH	03/07	BOUGHT	INTEL CORP	100	29.8125	2,981.25	
CASH	03/22	BOUGHT	LUCENT TECHNOLOGIES INC	372	10.7500	4,011.00	
			TOTAL			7,004.25	

3/22/01  
P. R. C. H.  
→





TD Waterhouse Investor Services, Inc.  
Member NYSE/SIPC  
100 Wall Street  
New York, NY 10005-3701  
www.tdwaterhouse.com

# ACCOUNT STATEMENT

ACCOUNT NO.	LAST STATEMENT	PERIOD ENDING	PAGE
	04/30/2002	05/31/2002	1 OF 4

SI 067 NNYN 2 1837 00460 001/004  
ROBERT D MORSE  
212 HIGHLAND AVE  
MOORESTOWN NJ 08057-2717

## BRANCH INFORMATION

210 LAKE DRIVE EAST STE 106  
WOODLAND FALLS  
CHERRY HILL, NJ 08002

CUSTOMER SERVICE: (800) 934-4448

ASSET ALLOCATION		THIS PERIOD		LAST PERIOD	
MAY 31, 2002			%		%
 CASH/EQUIV STOCKS	MONEY MARKET ACCT - FDIC				
	MONEY MARKET FUND	\$11,483.14	13.9	\$ 49,713.11	59.6
	STOCKS	70,859.30	86.1	33,742.83	40.4
	FIXED INCOME				
	OPTIONS				
	MUTUAL FUNDS				
	UNIT INVESTMENT TRUSTS				
TOTAL PORTFOLIO VALUE		\$82,342.44	100.0	\$83,455.94	100.0

ACCT	QUANTITY	DESCRIPTION	SYMBOL	MARKET PRICE	MARKET VALUE	PORT PCT	DIV OR INT %	EST. ANNUAL INCOME
CASH	11,483.14	CASH & CASH EQUIVALENTS CMF MONEY MARKET PORTFOLIO	CMFMZ	1.000	11,483.14	13.9	1.40	161
CASH		STOCKS						
CASH								
CASH								
CASH								
CASH		INTEL CORP	INTC	27.620	5,524.00	6.7	0.08	11
CASH								
CASH								
CASH								
CASH								

---

## **EXHIBIT B**

### **COMPANY'S SEPTEMBER 6, 2002 NOTICE OF DEFICIENCIES**

Intel Corporation  
2200 Mission College Blvd.  
P.O. Box 58119  
Santa Clara, CA 95052-8119  
(408) 765-8080  
www.intel.com



September 6, 2002

VIA FEDERAL EXPRESS

Robert D. Morse  
212 Highland Ave.  
Moorestown, NJ 08057-2717

Re: Your stockholder proposal

Dear Mr. Morse:

On September 4, 2002, we received your stockholder proposal dated August 23, 2002. Included in your letter was a copy of an account statement from TD Waterhouse, presumably as an effort to provide the proof of ownership required by Rule 14(a)-8(b).

Unfortunately, according to the SEC, a brokerage statement is insufficient evidence of continuous ownership. In its July 13, 2001 release concerning Rule 14(a)-8, the SEC directly addressed this question:

"Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?"

"No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal."

To clarify, you must provide a written statement from TD Waterhouse, which is apparently the record holder of your shares, stating that you have continuously held the securities for a year or more as of August 23, 2002.

I look forward to speaking with you soon regarding your proposal, and you may call me directly at (408) 765-2283 if you have any further questions about what is required for proof of ownership. Your response to this letter must be postmarked no later than 14 days from the date you receive this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel E. Kosmal". The signature is fluid and cursive, with a large, sweeping "R" and "K".

Rachel E. Kosmal  
Senior Attorney

**FedEx** *USA Airbill* Express

1 From House and underhand

Date 9/6/02

Sender's Name Richard Koenig

Company INTEL CORP

Address 2200 MISSION CO.

SANTA CLARA

## 2 Your Internal Billing Reference

3 To	Mr. Vincent M.
Mr. Vincent M.	

NAME Mr. Robert M.

Address 212 Vighlan  
to "MOM" or "DAD" or "GRANDMA" or "GRANDPA" address

City, Moorestown

See back for applica-

**Questions? Visit our Web**  
or call 1-800-Go-Fe

1000

Express

911-16  
Sander's find

DATE 11/10/02 Account Number \_\_\_\_\_

Sender's Name Rachael Kosman

Company: INTEL Code: 0000

Address 2200 MISSION COL  
STREET  
SAN FRANCISCO

CO SANTA CLARA

**2. Your Internal Billing Reference**  
Please check your card will appear on invoice.

**3 To:** Recipient's Name  
*Mr. Robert M.*

Name Mr. Robert M.

Company \_\_\_\_\_

Address 212 Highland  
to "0000" or "00000000" print full address

Moore, J. W.

14000 0000000000

**Questions? Visit our Website**  
Or call 1-800-Go-Fe

and to our current service line, at



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643

Telephone: 901-369-3600

1/13/2003

Dear Customer:

Here is the proof of delivery for the shipment with tracking number **825596238163**. Our records reflect the following information.

---

**Delivery Information:**

---

**Signed For By:** R. OBERT MORSE



**Delivery Location:** 212 HIGHLAND AVE

**Delivery Date:** September 9, 2002

**Delivery Time:** 1227

---

**Shipping Information:**

---

**Tracking No:** 825596238163

**Ship Date:** September 6, 2002

**Recipient:**

MR ROBERT MECSE

-

212 HIGHLAND AVE

MOORESTOWN, NJ 08057

US

**Shipper:**

RECHEL KOSMAL

INTEL CORP

2200 MISSION COLLEGE BLVD

SANTA CLARA, CA 950541549

**Shipment Reference Information:**

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service

1-800-Go-FedEx®

Reference No.: R2003011300068259092

---

## **EXHIBIT C**

**PROPONENT'S COPY OF LETTER FROM TD  
WATERHOUSE INDICATING STOCK OWNERSHIP  
AS OF SEPTEMBER 10, 2002**



210 Lake Drive East, Suite 106  
Cherry Hill, NJ 08002  
Telephone No. (800) 934-4448

September 10, 2002

RE: Acct #                      ;, Robert D. Morse

To Whom it May Concern:

This letter is to inform you that Robert D. Morse holds 200 shares of Intel Corp (INTC) as of today in his TD Waterhouse account.

Thank you,

Chris Mukoda  
Branch Manger – Vice President  
TD Waterhouse  
Cherry Hill, NJ Branch  
800-934-4448 ext. 60544

**Purchases**

10/2/00 100 Shares Intel Corp. @ \$42.00 sh.  
3/2/01 100 Shares Intel Corp. @ \$291/6 sh.

*This memorandum does not constitute an offer to sell or the solicitation of an offer to buy any security. The material herein has been obtained from various sources and is not guaranteed by us as to accuracy or authenticity. It does not purport to include all the information available on the companies mentioned. The reader is referred to the regular statistical services, company reports, or any official prospectuses for further detail. TD Waterhouse Investor Services, Inc. Member NYSE/SIPC.*

---

**EXHIBIT D**

**COMPANY'S OCTOBER 7, 2002 NOTICE OF  
DEFICIENCIES**



2200 Mission College Blvd.  
P.O. Box 58119  
Santa Clara, CA 95052-8119  
(408) 765-8080  
www.intel.com



October 7, 2002

VIA FEDERAL EXPRESS

Robert D. Morse  
212 Highland Ave.  
Moorestown, NJ 08057-2717

Re: Your stockholder proposal

Dear Mr. Morse:

We have received a letter from Chris Mukoda at TD Waterhouse concerning your ownership of Intel stock, presumably as an effort to provide the proof of ownership for your recently submitted stockholder proposal as required by Rule 14(a)-8(b).

Unfortunately, the letter from Mr. Mukoda does not address the requirement of *continuous* ownership. In its July 13, 2001 release concerning Rule 14(a)-8, the SEC directly addressed this question:

"Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?"

"No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that **specifically verifies that the shareholder owned the securities continuously for a period of one year as of the time of submitting the proposal.**" (emphasis added)

To clarify, you must provide a written statement from TD Waterhouse, which is apparently the record holder of your shares, stating that you have *continuously* held the securities for a year or more as of August 23, 2002. The letter from Mr. Mukoda lists two different purchase dates for Intel stock, but this information is not sufficient to meet the requirements of Rule 14(a)-8 because it does not show that you have continuously owned the shares. In addition, the first transaction described contains a typographical error, so the number of shares cannot be determined with any certainty.

I look forward to speaking with you soon regarding your proposal, and you may call me directly at (408) 765-2283 if you or your brokerage firm has any further questions about what is required for proof of ownership.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel E. Kosmal".

Rachel E. Kosmal  
Senior Attorney

Cc: Chris Mukoda, TD Waterhouse

# FedEx<sup>®</sup> USA Airbill<sup>®</sup> Express

FedEx Tracking Number

8255 9623 8050

1 FROM Please print and press hard  
 Date 10/1/02 Sender's FedEx Account Number 1563-5985-2

Sender's Name Rachel Kosmal Phone 408 1765-1542

Company INTEL CORP

Address 2200 MISSION COLLEGE BLVD

City SANTA CLARA State CA ZIP 95054

2 Your Internal Billing Reference OPTIONAL

3 To Recipient's Name Mr. Robert Morse Phone ( )

Company

Address 212 Highland Ave.

We cannot deliver to ZIPs marked as ZIP not serviceable.

City Moorestown State NJ ZIP 08057-2717

Peel and Stick FedEx USA Airbill

See back for application instructions.

Questions? Visit our Web site at [www.fedex.com](http://www.fedex.com)

or call 1-800-Go-FedEx<sup>®</sup> (800)463-3338.  
 By using this Airbill you agree to the service conditions on the back of this Airbill and to our current Service Guide, including terms that link our liability.

0170042967

## Sender's Copy

4a Express Package Service  
 Packages up to 650 lbs.  
 Delivery service times only for FedEx Home Delivery.  
☐ FedEx Priority Overnight ☒ FedEx Standard Overnight ☐ FedEx First Overnight  
Next business day delivery to select locations.

☐ FedEx 2Day<sup>®</sup> ☐ FedEx Express Saver<sup>®</sup>  
Second business day delivery to select locations.

4b Express Freight Service  
 Packages over 250 lbs.  
 Delivery service times only for FedEx Home Delivery.  
☐ FedEx 1Day Freight<sup>®</sup> ☐ FedEx 2Day Freight<sup>®</sup> ☐ FedEx 3Day Freight<sup>®</sup>  
Next business day delivery to select locations.

5 Packaging  
☒ FedEx Envelope/Letter<sup>®</sup> ☐ FedEx Pak<sup>®</sup> ☐ Other Pkg.  
Other Pkg. must be labeled "Fragile" and "Handle with Care".

6 Special Handling  
 See back for details.  
☐ SUNDAY Delivery ☐ HOLIDAY Delivery ☐ HOLD Saturday at FedEx Location  
☐ RESTRICTIONS ☐ RESTRICTIONS  
Available only for FedEx Priority. Not available with FedEx First Overnight. Not available with FedEx First Overnight.

7 Payment ☒ Bill Me ☐ Cash ☐ Credit Card ☐ Cash/Check  
Payment must be made in full at time of shipment. Payment by credit card is subject to credit review.

8 Release Signature  
 Signature required for delivery to recipient's address.  
 Signature required for delivery to recipient's address.

Total Packages 1 Total Weight 1 Total Declared Value<sup>1</sup> \$ 00

1402

By signing this Airbill you agree to the service conditions on the back of this Airbill and to our current Service Guide, including terms that link our liability.

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE.



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643

Telephone: 901-369-3600

1/13/2003

Dear Customer:

Here is the proof of delivery for the shipment with tracking number **825596238050**. Our records reflect the following information.

---

**Delivery Information:**

---

**Signed For By:** M.MORSE

A black and white image of a handwritten signature, "M. Morse", in cursive script, written over a background of repeating "FedEx" logos.

**Delivery Location:** 212 HIGHLAND

**Delivery Date:** October 8, 2002

**Delivery Time:** 1340

---

**Shipping Information:**

---

**Tracking No:** 825596238050

**Ship Date:** October 7, 2002

**Recipient:**

MR ROBERT MORSE

212 HIGHLAND AVE

MOORESTOWN, NJ 08057

US

**Shipper:**

RACHEL KOSMAL

INTEL CORP

2200 MISSION COLLEGE BLVD

SANTA CLARA, CA 95054

US

**Shipment Reference Information:**

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service

1-800-Go-FedEx®

Reference No.: R2003011300068016131

---

## **EXHIBIT E**

**COMPANY'S RESTATED CERTIFICATE OF  
INCORPORATE, AS AMENDED**

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION  
OF  
INTEL CORPORATION

INTEL CORPORATION, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

FIRST: The name of this corporation is Intel Corporation.

SECOND: The original Certificate of Incorporation of the corporation was filed with the Secretary of State of Delaware on May 1, 1989, and the original name of the corporation was Intel Delaware Corporation.

THIRD: Pursuant to Section 245 of the General Corporation Law of the State of Delaware, the provisions of the Certificate of Incorporation as heretofore amended and supplemented are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled "Restated Certificate of Incorporation of Intel Corporation," without further amendment and without any discrepancy between the provisions of the Certificate of Incorporation as heretofore amended and supplemented and the provisions of such single instrument as hereinafter set forth.

FOURTH: The Board of Directors of the corporation has duly adopted this Restated Certificate of Incorporation pursuant to the provisions of Section 245 of the General Corporation Law of the State of Delaware in the form set forth as follows:

RESTATED CERTIFICATE OF INCORPORATION

OF

INTEL CORPORATION

1. The name of the Corporation is Intel Corporation.
2. The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows: To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.
4. The total number of shares of all classes of stock that the Corporation is authorized to issue is one billion four hundred fifty million (1,450,000,000) shares, consisting of one billion four hundred million (1,400,000,000) shares of Common Stock with a par value of one-tenth of one cent (\$.001) per share and fifty million (50,000,000) shares of Preferred Stock with a par value of one-tenth of one cent (\$.001) per share. The Preferred Stock may be issued in one or more series, and the Board of Directors of the Corporation is expressly authorized (i) to fix the descriptions, powers, preferences, rights, qualifications, limitations, and restrictions with respect to any series of Preferred Stock and (ii) to specify the number of shares of any series of Preferred Stock.
5. The Board of Directors is expressly authorized to make, alter, or repeal the bylaws of the Corporation.
6. Elections of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.
7. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors,

and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

8. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.
9. To the fullest extent permitted by Delaware statutory or decisional law, as amended or interpreted, no director of this Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This Article 9 does not affect the availability of equitable remedies for breach of fiduciary duties. Any repeal or modification of the provisions of this Article 9 by the stockholders of the Corporation shall not adversely affect any right or protection of any director existing at the time of such repeal or modification.
10. The vote of the stockholders of the Corporation which shall be required to approve any Business Combination (as hereinafter defined) shall be as set forth in this Article 10.
  - (1) In addition to any affirmative vote required by law, any other provision of this Certificate of Incorporation or otherwise, and except as otherwise expressly provided in paragraph (2) or (6) of this Article 10, none of the following transactions shall be consummated unless and until such transaction shall have been approved by the affirmative vote of the holders of at least  $66 \frac{2}{3}$  percent of the combined voting power of the outstanding shares of stock of all classes and series of the Corporation entitled to vote generally in the election of directors ("Capital Stock"):
    - (A) any merger or consolidation of the Corporation or any material Subsidiary (as hereinafter defined) with or into (i) any corporation which is an Interested Stockholder (as hereinafter defined) or (ii) any other corporation which is or after such merger or consolidation would be an Interested Stockholder; or
    - (B) any sale, License (as hereinafter defined), lease, exchange, mortgage, pledge, transfer or other disposition (whether in one transaction or a series of transactions) to or with any Interested Stockholder of any material asset or assets of the Corporation; or

- (C) the issuance or transfer by the Corporation or any Subsidiary (whether in one transaction or a series of transactions) to an Interested Stockholder of any securities of the Corporation or any Subsidiary in exchange for cash, securities, or other property (or a combination thereof) having an aggregate Fair Market Value (as hereinafter defined) of \$20 million or more; or
- (D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation or any material Subsidiary; or
- (E) any reclassification of any securities of the Corporation (including any reverse stock split), any recapitalization of the Corporation, any merger or consolidation of the Corporation with or into any of its Subsidiaries, or any other transaction (whether or not with or involving any Interested Stockholder), which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of stock or series thereof of the Corporation or of any Subsidiary directly or indirectly Beneficially Owned (as hereinafter defined) by any Interested Stockholder or as a result of which the stockholders of the Corporation would cease to be stockholders of a corporation having, as part of its articles or certificate of incorporation, provisions to the same effect as this Article 10 and the provisions of Article 12 hereof relating to amendments or changes to this Article 10.

The term "Business Combination" as used in this Article 10 shall mean any transaction or proposed transaction which is referred to in any one or more of the subparagraphs (A) through (E) of this paragraph (1) of this Article 10.

- (2) The provisions of paragraph (1) of this Article 10 shall not be applicable to any particular Business Combination, and such Business Combination shall require only such vote, if any, as is required by law and any other Article hereof or any agreement between the Corporation and any national securities exchange or otherwise, if all of the conditions specified in either of the following paragraphs (A) or (B) are satisfied:
  - (A) such Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined) or, in the case of a License, approved by a majority of the Disinterested Directors or a committee of Disinterested Directors designated by the Board of Directors; or
  - (B) if all the conditions specified in each of the following subparagraphs (i), (ii), (iii), (iv) and (v) are satisfied:



- (i) the aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of any consideration other than cash to be received per share by holders of Capital Stock in such Business Combination, shall be at least equal to the higher of the following:
  - (a) if applicable, the highest per share price (including any brokerage commissions, transfer taxes, soliciting dealers' fees and other expenses) paid by the Interested Stockholder involved in such Business Combination for any shares of Capital Stock acquired by it during the five-year period immediately prior to the consummation date of such Business Combination; and
  - (b) the Fair Market Value per share of Capital Stock on the Determination Date (as hereinafter defined) in respect of such Interested Stockholder, the Announcement Date (as hereinafter defined) or the consummation date of such Business Combination, whichever is highest; provided, however, that the prices referred to in the foregoing clauses (a) and (b) of this subparagraph (i) shall be adjusted to reflect fairly any stock dividend, stock split, reverse stock split, combination of shares, recapitalization, reorganization or similar event affecting the number of shares of Capital Stock outstanding and the market price per share of outstanding shares of Capital Stock which has occurred after the date as of which such price is determined; and
- (ii) unless otherwise specifically required by law, the holders of shares of Capital Stock shall have the right, at their option, to receive payment in cash as the consideration for their shares in the Business Combination, if cash was previously paid by the Interested Stockholder involved in such Business Combination in order to acquire any shares of Capital Stock or any interest in shares of Capital Stock within the two-year period immediately prior to the Announcement Date; and
- (iii) after the Determination Date in respect of the Interested Stockholder involved in such Business Combination and prior to the consummation of such Business Combination:
  - (a) if regular dividends have been paid by the Corporation, except as approved by a majority of the Disinterested

Directors, there shall have been no failure to declare and pay at the regular date thereof any dividend (whether or not cumulative);

- (b) there shall have been no reduction in the annual rate of dividends, if any, paid on the Capital Stock (except as necessary to reflect any subdivision of the Capital Stock), except as approved by a majority of the Disinterested Directors;
  - (c) there shall have been an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split or combination of shares), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Capital Stock, unless the failure to increase such annual rate is approved by a majority of the Disinterested Directors; and
  - (d) such Interested Stockholder shall not have become the beneficial owner of any additional shares of the Capital Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder; and
- (iv) after the Determination Date in respect of the Interested Stockholder involved in such Business Combination, such Interested Stockholder shall not have received the benefit, directly or indirectly (except as a shareholder of the Corporation, in proportion to its shareholding), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise; and
- (v) a proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing or revising such Act, rules or regulations) shall, at the Corporation's expense, be mailed to stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act, rules or regulations or subsequent provisions), and the Disinterested Directors, if

there are any at the time, shall have been provided a reasonable opportunity to state their views therein with respect to such proposed Business Combination and to include therewith an opinion of an independent investment banking or appraisal firm selected by the Disinterested Directors with respect to such Business Combination.

(3) For purposes of this Article 10;

- (A) An "Affiliate" of a person shall mean any person who, directly or indirectly, controls, is controlled by or is under common control with such person.
- (B) "Announcement Date" with respect to any Business Combination means the date on which the proposal of such Business Combination is publicly announced.
- (C) An "Associate" shall mean
  - (i) with respect to a corporation or association, any officer or director thereof or of a subsidiary thereof,
  - (ii) with respect to a partnership, any general partner thereof or any limited partner thereof having a ten percent ownership interest in such partnership,
  - (iii) with respect to any other trust or an estate, any officer or trustee thereof or of any subsidiary thereof,
  - (iv) with respect to any other trust or an estate, any trustee, executor or similar fiduciary and any person who has a substantial interest as a beneficiary of such trust or estate,
  - (v) with respect to a natural person, the spouses and children thereof and any other relative thereof or of the spouse thereof who has the same home, and
  - (vi) any Affiliate of any such person.
- (D) A person shall be a "Beneficial Owner" of, or have "Beneficial Ownership" of or "Beneficially Own," any Capital Stock over which such person or any of its Affiliates or Associates, directly or indirectly, through any contract, arrangement, understanding or relationship, has or shares or, upon the exercise of any conversion right, exchange right, warrant, option or similar interest (whether or not then exercisable), would have or share either (i) voting power (including the power to vote or

to direct the voting) of such security or (ii) investment power (including the power to dispose or direct the disposition) of such security. For the purposes of determining whether a person is an Interested Stockholder, the number of shares of Capital Stock deemed to be outstanding shall include any shares Beneficially Owned by such Person even though not actually outstanding, but shall not include any other shares of Capital Stock which are not outstanding but which may be issuable to other persons pursuant to any agreement, arrangement or understanding, or upon exercise of any conversion right, exchange right, warrant, option or similar interest.

- (E) "Consolidated Transaction Reporting System" shall mean the system of reporting securities information operated under the authority of Rule 11Aa3-1 under the Securities Exchange Act of 1934, as such rule may from time to time be amended, and any successor rule or rules.
- (F) "Determination Date" in respect of an Interested Stockholder shall mean the date on which such Interested Stockholder first became an Interested Stockholder.
- (G) "Disinterested Director" shall mean any member of the Board of Directors of the Corporation who is not an Affiliate or Associate of, and was not directly or indirectly a nominee of, any Interested Stockholder involved in such Business Combination or any Affiliate or Associate of such Interested Stockholder and who (i) was a member of the Board of Directors of Intel Corporation, a California corporation, on April 16, 1986; (ii) was a member of the Board of Directors of the Corporation prior to the time that such Interested Stockholder became an Interested Stockholder or (iii) is a successor of a Disinterested Director and was nominated to succeed a Disinterested Director by a majority of the Disinterested Directors on the Board of Directors at the time of his nomination. Any reference to "Disinterested Directors" shall refer to a single Disinterested Director if there be but one. Any reference to an approval, designation or determination by a majority of the Disinterested Directors shall mean such approval, designation or determination by a committee of the Board of Directors comprised of all Disinterested Directors and exercising its authority as a committee of the Board to the extent permissible by law.
- (H) "Fair Market Value" as of any particular date shall mean (i) in the case of stock, the average of the closing sale price during the 90 trading days immediately preceding the date in question of a share of such stock on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the average of the last sale prices at 4:00 p.m. New

York time during the 90 trading days immediately preceding the date in question reported in the Consolidated Transaction Reporting System (as heretofore defined) or, if such stock is not so reported, the average of the highest reported bid and the lowest reported asked quotations for a share of such stock furnished by the National Association of Securities Dealers Automated Quotation System or any successor quotation reporting system or, if quotations are not available in such system, as furnished by the National Quotation Bureau Incorporated or, if quotations are not available in such system, any similar organization furnishing quotations and, if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Disinterested Directors in good faith and (ii) in the case of property other than cash or stock, the fair market value of such stock or property, as the case may be, on the date in question as determined by a reputable investment banking or appraisal firm in good faith (such firm to be engaged solely on behalf of the stockholders other than the Interested Stockholder, to be paid a reasonable fee for their services by the Corporation upon receipt of such opinion and which fee shall not be contingent on the consummation of the action or transaction, to be a firm which has not previously been associated with or rendered substantial services to or acted as manager of an underwriting or as agent for the Interested Stockholder or any other person whose stock in the Corporation or any Subsidiary the Interested Stockholder beneficially owns or controls, and to be selected by a majority of the Disinterested Directors) and which value has been approved by a majority of the Disinterested Directors in good faith.

- (I) "Interested Stockholder" shall mean any person, other than the Corporation, any Subsidiary or any employee benefit plan of the Corporation or any Subsidiary, who or which (i) is the Beneficial Owner, directly or indirectly, of shares of Capital Stock which are entitled to cast five percent or more of the total votes which all of the then outstanding shares of Capital Stock are entitled to cast in the election of directors or is an Affiliate or Associate of any such person or (ii) acts with any other person as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of the Corporation, and such group is the Beneficial Owner, directly or indirectly, of shares of Capital Stock which are entitled to cast five percent or more of the total votes which all of the then outstanding shares of Capital Stock are entitled to cast in the election of directors, and any reference to a particular Interested Stockholder involved in a Business Combination shall also refer to any Affiliate or Associate thereof, any predecessor thereto and any other person acting as a member of a partnership, limited partnership, syndicate or group

with such particular Interested Stockholder within the meaning of the foregoing clause (ii) of this subparagraph (I).

- (J) "License" shall mean a material license which is not granted in standard commercial transactions and is not generally available to commercial customers of the Corporation.
  - (K) A "person" shall mean any individual, firm, corporation (which shall include a business trust), partnership, joint venture, trust or estate, association or other entity.
  - (L) "Subsidiary" shall mean any corporation or partnership of which a majority of any class of its equity securities is owned, directly or indirectly, by the Corporation.
- (4) A majority of the Disinterested Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article 10, including, without limitation (i) whether a person is an Interested Stockholder, (ii) the number of shares of Capital Stock Beneficially Owned by any person, (iii) whether a person is an Affiliate or Associate of another person, (iv) whether the requirements of paragraph (2) of this Article 10 have been met with respect to any Business Combination, and (v) whether two or more transactions constitute a "series of transactions" for purposes of paragraph (1) of this Article 10. The good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all purposes of this Article 10.
  - (5) Nothing contained in this Article 10 shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.
  - (6) The provisions of paragraph (1) of this Article 10 shall not be applicable to any particular Business Combination, and such Business Combination shall require only such vote of stockholders, if any, as is required by law and any other Article hereof or any agreement between the Corporation and any national securities exchange or otherwise, if on the date of determining the stockholders entitled to vote on such Business Combination, the laws of the State of Delaware do not permit the corporation to require the affirmative vote of the holders of at least 66 2/3 percent of the combined voting power of the outstanding shares of Capital Stock to approve such Business Combination.
11. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by the stockholders.

12. In addition to any requirements of law and any other provisions hereof (and notwithstanding the fact that approval by a lesser vote may be permitted by law or any other provision hereof), the affirmative vote of the holders of at least 66\_ percent of the voting power of the then outstanding shares of stock of all classes and all series of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal, or adopt any provision inconsistent with, this Article 12 or Articles 10 or 11 hereof.

IN WITNESS WHEREOF, Intel Corporation has caused this certificate to be signed by its Vice President, General Counsel and Secretary and attested by its Assistant Secretary this 7th day of May, 1993.

By: /s/F. Thomas Dunlap, Jr.  
-----  
Vice President, General  
Counsel and Secretary

Attest: /s/Theodore W. Vian  
-----  
Assistant Secretary

CERTIFICATE OF AMENDMENT  
TO THE RESTATED CERTIFICATE OF INCORPORATION  
OF  
INTEL CORPORATION

Intel Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, at a meeting duly held in January, 1997, adopted a resolution proposing and declaring advisable the amendment to the Restated Certificate of Incorporation of the Corporation and directed that said amendment be submitted for the consideration of the Corporation's stockholders at the next annual meeting thereof. The proposed amendment is as follows:

The first sentence of paragraph 4 of the Restated Certificate of Incorporation of the Company is hereby deleted and the following is substituted in lieu thereof:

The total number of shares of all classes of stock that the Corporation is authorized to issue is four billion five hundred fifty million (4,550,000,000), consisting of four billion five hundred million (4,500,000,000) shares of Common Stock with a par value of one tenth of one cent (\$.001) per share and fifty million (50,000,000) shares of Preferred Stock with a par value of one tenth of one cent (\$.001) per share.

Accordingly, the first sentence of paragraph 4 of the Restated Certificate of Incorporation of the Company shall read in its entirety as follows:

4. The total number of shares of all classes of stock that the Corporation is authorized to issue is four billion five hundred fifty million (4,550,000,000), consisting of four billion five hundred million (4,500,000,000) shares of Common Stock with a par value of one tenth of one cent (\$.001) per share and fifty million (50,000,000) shares of Preferred Stock with a par value of one tenth of one cent (\$.001) per share. The Preferred Stock may be issued in one or more series, and the Board of Directors of the Corporation is expressly authorized (i) to fix the descriptions, powers, preferences, rights, qualifications, limitations, and restrictions with respect to any series of Preferred Stock and (ii) to specify the number of shares of any series of Preferred Stock.

SECOND: That thereafter, at the annual meeting of stockholders of the Corporation duly held on May 21, 1997, upon notice and in accordance with



Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required were voted in favor of the amendment.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That this Certificate of Amendment of the Certificate of Incorporation shall be effective on the date of filing with the Secretary of the State of Delaware.

IN WITNESS WHEREOF, said Intel Corporation has caused this Certificate to be signed by F. Thomas Dunlap, Jr., its Vice President, General Counsel and Secretary, and attested by Cary I. Klafter, the Assistant Secretary, this 30th day of May, 1997.

INTEL CORPORATION

By: /s/F. Thomas Dunlap, Jr.

-----  
F. Thomas Dunlap, Jr.  
Vice President, General  
Counsel and Secretary

Attest: /s/Cary I. Klafter

-----  
Cary I. Klafter

---

Source: SEC Info · [www.secinfo.com](http://www.secinfo.com) · Fran Finnegan & Company Inc. · 1/10/3

Exhibit 3.1

CERTIFICATE OF AMENDMENT  
TO THE RESTATED CERTIFICATE OF INCORPORATION  
OF  
INTEL CORPORATION

Intel Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation, at a meeting duly held on January 12, 2000, adopted a resolution proposing and declaring advisable an amendment to the Restated Certificate of Incorporation of the Corporation and directed that said amendment be submitted for the consideration of the Corporation's stockholders at the next annual meeting thereof. The proposed amendment is as follows:

The first sentence of paragraph 4 of the Restated Certificate of Incorporation of the Corporation is hereby deleted and the following is substituted in lieu thereof:

The total number of shares of all classes of stock that the Corporation is authorized to issue is ten billion fifty million (10,050,000,000) consisting of ten billion (10,000,000,000) shares of Common Stock with a par value of one tenth of one cent (\$.001) per share and fifty million (50,000,000) shares of Preferred Stock with a par value of one tenth of one cent (\$.001) per share.

Accordingly, paragraph 4 of the Restated Certificate of Incorporation of the Corporation shall read in its entirety as follows:

4. The total number of shares of all classes of stock that the Corporation is authorized to issue is ten billion fifty million (10,050,000,000) consisting of ten billion (10,000,000,000) shares of Common Stock with a par value of one tenth of one cent (\$.001) per share and fifty million (50,000,000) shares of Preferred Stock with a par value of one tenth of one cent (\$.001) per share. The Preferred Stock may be issued in one or more series, and the Board of Directors of the Corporation is expressly authorized (i) to fix the descriptions, powers, preferences, rights, qualifications, limitations, and restrictions with respect to any series of Preferred Stock and (ii) to specify the number of shares of any series of Preferred Stock.

SECOND: That thereafter,, at the annual meeting of stockholders of the Corporation duly held on May 17, 2000, upon notice and in accordance with Section 222 of the General Corporation Law of the State of Delaware, the necessary number of shares as required were voted in favor of the amendment.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That this Certificate of Amendment to the Restated Certificate of Incorporation shall be effective on the date of filing with the Secretary of the State of Delaware.

IN WITNESS WHEREOF, said Intel Corporation has caused this Certificate to be signed by F. Thomas Dunlap, Jr., its Vice President, General Counsel and Secretary, and attested by Cary I. Klafter, the Assistant Secretary, this 17th day of May, 2000.

INTEL CORPORATION

By: /s/ F. Thomas Dunlap, Jr.

-----  
F. Thomas Dunlap, Jr.  
Vice President, General  
Counsel and Secretary

Attest:/s/ Cary I. Klafter

-----  
Cary I. Klafter  
Assistant Secretary

---

Source: SEC Info · [www.secinfo.com](http://www.secinfo.com) · Fran Finnegan & Company Inc. · 1/8/3

---

## **EXHIBIT F**

### **COMPANY'S BYLAWS**

*This is an EDGAR HTML document rendered as filed.*

---

<b>AGREEMENT</b>
------------------

**INTEL CORPORATION****BYLAWS****ARTICLE I****Offices**

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at 2200 Mission College Boulevard, Santa Clara, County of Santa Clara, State of California, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II****Stockholders' Meetings****Section 1. Place of Meetings.**

(a) Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 of Article I hereof.

(b) The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the Delaware General Corporation Law. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication,

a record of such vote or other action shall be maintained by the corporation.

---

Section 2. Annual Meetings. The annual meetings of the stockholders of the corporation for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors, but in no event more than fifteen (15) months after the date of the preceding annual meeting.

Section 3. Special Meetings. Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board or the President or the Board of Directors at any time.

Section 4. Notice of Meetings.

(a) Except as otherwise provided by law or the Certificate of Incorporation, written notice (as the term "*written*" is defined in Article XII hereof) of each meeting of stockholders, specifying the place, if any, date and hour of the meeting; the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting; and purpose or purposes of the meeting, shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote thereat, directed to the stockholder in accordance with the procedures set forth in Article X hereof. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the "*householding*" rules set forth in Rule 14a-3(e) under the Securities Exchange Act of 1934, as amended ("*Exchange Act*").

(b) If at any meeting action is proposed to be taken which, if taken, would entitle stockholders fulfilling the requirements of Section 262(d) of the Delaware General Corporation Law to an appraisal of the fair value of their shares, the notice of such meeting shall contain a statement of that purpose and to that effect and shall be accompanied by a copy of that statutory section.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken unless the adjournment is for more than thirty days, or unless after the adjournment a new record date is fixed for the adjourned meeting, in which event a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(d) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, either before or after such meeting, and to the extent permitted by law, will be waived by any stockholder by his attendance thereat, in person or by proxy. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

---

(e) Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of his legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

Section 5. Quorum and Voting.

(a) At all meetings of stockholders, except where otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Shares, the voting of which at said meeting have been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at said meeting. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the original meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

Section 6. Voting Rights.

(a) Except as otherwise provided by law, only persons in whose names shares entitled to vote stand on the stock records of the corporation on the record date for determining the stockholders entitled to vote at said meeting shall be entitled to vote at such meeting. Shares standing in the names of two or more persons shall be voted or represented in accordance with the determination of the majority of such persons, or, if only one of such persons is present in person or represented by proxy, such person shall have the right to vote such shares and such shares shall be deemed to be represented for the purpose of determining a quorum.

(b) Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary of the corporation at or before the meeting at which it is to be used. Said proxy so appointed need not be a stockholder. No proxy shall be voted on after three years from its date unless the proxy provides for a longer period.

---

Section 7. List of Stockholders. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders,

a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Nothing contained in Section 219 of the Delaware General Corporation Law shall require the corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting, either (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

#### Section 8. Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. To be effective, a written consent must be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation in accordance with this section.

---

(b) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder, and (b) the date on which such stockholder or proxyholder or



authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Except to the extent and in the manner authorized by the Board of Directors, no consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested.

(c) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(d) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date of such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the corporation in the manner required by this section.

#### Section 9. Nominations and Stockholder Business.

(a) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the Board of Directors, or (c) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this Section 9, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 9.

---

(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to this Section 9, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, and such business must be a proper subject for stockholder action under the Delaware General Corporation Law. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation (if delivered by electronic mail or facsimile, the stockholder's notice shall be directed to the Secretary at the electronic mail address or facsimile number, as the case may be, specified in the company's most recent proxy statement) not less than 45 days nor more than 120 days prior to the date on which the corporation first mailed its proxy materials for the prior year's annual meeting of stockholders; provided, however, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed (other than as a result of adjournment) by more than 30 days from the anniversary of the previous year's annual meeting, notice by the stockholder to be timely must be delivered not

later than the close of business on the later of the 60th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including 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 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 owners 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, and (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(c) Notwithstanding anything in this Section 9 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement specifying the size of the increased Board of Directors made by the corporation at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 9 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.

---

(d) 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 (a) by or at the direction of the Board of Directors or (b) by any stockholder of the corporation who is a stockholder of record at the time of giving of notice provided for in this section, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this section. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders if the stockholder's notice required by this section shall be delivered to the Secretary at the principal executive offices of the corporation (if delivered by electronic mail or facsimile, the stockholder's notice shall be directed to the Secretary at the electronic mail address or facsimile number, as the case may be, specified in the company's most recent proxy statement) not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or 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.

(e) Only those persons who are nominated in accordance with the procedures set

forth in this section shall be eligible for election as directors at any meeting of stockholders. 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. The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this section and, if any proposed nomination or business is not in compliance with this section, to declare that such defective proposal shall be disregarded.

(f) For purposes of this section, "*public announcement*" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 9, 13, 14 or 15(d) of the Exchange Act.

(g) Notwithstanding the foregoing provisions of this Section 9, 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 this Section 9. Nothing in this Section 9 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

---

### ARTICLE III

#### Directors

Section 1. Number and Term of Office. The number of directors which shall constitute the whole of the Board of Directors shall be eleven (11). With the exception of the first Board of Directors, which shall be elected by the incorporator, and except as provided in Section 3 of this Article III, the directors shall be elected by a plurality vote of the shares represented in person or by proxy, at the stockholders annual meeting in each year and entitled to vote on the election of directors. Elected directors shall hold office until the next annual meeting and until their successors shall be duly elected and qualified. Directors need not be stockholders. If, for any cause, the Board of Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 2. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by or under the direction of the Board of Directors.

Section 3. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant, and until his successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this section in the case of the death, removal or resignation of any director, or if the stockholders fail at any meeting of stockholders at which directors are to be elected (including any meeting referred

to in Section 4 below) to elect the number of directors then constituting the whole Board.

#### Section 4. Resignations and Removals.

(a) Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

(b) Except as provided in Section 141 of the Delaware General Corporation Law, at a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors, or any individual director, may be removed from office, with or without cause, and a new director or directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors.

---

#### Section 5. Meetings.

(a) The annual meeting of the Board of Directors shall be held immediately after the annual stockholders' meeting and at the place where such meeting is held or at the place announced by the Chairman at such meeting. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 of Article I hereof. Regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolutions of the Board of Directors or the written consent of all directors. Notice of regular meetings of the directors is hereby dispensed with and no notice whatever of any such meetings need be given.

(c) Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or by any two of the directors.

(d) Written notice of the time and place of all special meetings of the Board of Directors shall be delivered to each director at least 24 hours before the start of the meeting, or if sent by first class mail, at least 72 hours before the start of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat.

## Section 6. Quorum and Voting.

(a) A quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 1 of Article III of these Bylaws, but not less than one; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation, or these Bylaws.

(c) Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

---

(d) The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall deliver to the corporation a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 7. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or of such committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form.

Section 8. Fees and Compensation. Directors shall not receive any stated salary for their services as directors but by resolution of the Board, a fixed fee, with or without expense of attendance, may be allowed for attendance at each meeting and at each meeting of any committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefor.

## Section 9. Committees.

(a) Executive Committee: The Board of Directors may appoint an Executive Committee of not less than one member, each of whom shall be a director. The Executive Committee, to the extent permitted by Delaware law, these Bylaws, the Executive

Committee Charter or other resolutions of the Board of Directors, shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to (a) approve or adopt, or recommend to the corporation's stockholders, any action or matter expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the corporation.

(b) Other Committees: The Board of Directors may appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

---

(c) Term: The members of all committees of the Board of Directors shall serve a term coexistent with that of the Board of Directors which shall have appointed such committee. The Board, subject to the provisions of subsections (a) or (b) of this Section 9, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided, that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of his death or voluntary resignation, but the Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not the member or members constitutes a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings: Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 2 of Article I hereof, or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a

quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 10. Emeritus Director.** The Board of Directors may, from time to time, elect one or more Emeritus Directors, each of whom shall serve, at the pleasure of the Board, until the first meeting of the Board next following the Annual Meeting of Stockholders and for a maximum period of 3 years, subject to an annual review, or until earlier resignation or removal by the Board (except that founders of the company may remain as Emeritus Directors, subject to the annual review, or until earlier resignation or removal by the Board). Emeritus Directors shall serve as advisors and consultants to the Board of Directors and may be appointed by the Board to serve as advisors and consultants to committees of the Board. Emeritus Directors may be invited to attend meetings of the Board or any committee of the Board for which they have been appointed to serve as advisors and consultants and, if present, may participate in the discussions occurring during such meetings. Emeritus Directors shall not be permitted to vote on matters brought before the Board or any committee thereof and shall not be counted for the purpose of determining whether a quorum of the Board or the committee is present. Emeritus Directors shall receive no fee for their services as Emeritus Directors. Emeritus Directors will not be entitled to receive reimbursement for expenses of meeting attendance, except as approved by the Chairman of the Board. Emeritus Directors may be removed at any time by the Board of Directors.

---

**Section 11: Emergency Bylaws.** In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the Delaware General Corporation Law, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate.

## ARTICLE IV

### Officers

**Section 1. Officers Designated.** The officers of the corporation shall be a Chairman of the Board of Directors who shall be a member of the Board of Directors, a President, one or more Vice Presidents, a Secretary, and a Treasurer. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors or the Chairman of the Board or the President may also appoint one or more assistant secretaries, assistant treasurers, and such other officers and agents with such powers and duties as it or he or she shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as they shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

## Section 2. Tenure and Duties of Officers.

(a) General: All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the corporation.

---

(b) Duties of the Chairman of the Board of Directors: The Chairman of the Board of Directors shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) Duties of President: The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents: The Vice Presidents, in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. The Vice President shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) Duties of Secretary: The Secretary shall attend all meetings of the stockholders and of the Board of Directors and any committee thereof, and shall record all acts and proceedings thereof in the minute book of the corporation and shall keep the seal of the corporation in safe custody. The Secretary shall give notice, in conformity with these Bylaws, of all meetings of the stockholders, and of all meetings of the Board of Directors and any Committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer and Treasurer: Each of the Chief Financial Officer and the Treasurer shall control, audit and arrange the financial affairs of the corporation, consistent with the responsibilities delegated to each of them by the corporation's President. The Chief Financial Officer or Treasurer, as the case may be, shall receive and deposit all monies belonging to the corporation and shall pay out the same only in such manner as the Board of Directors may from time to time determine, and shall perform such other further duties as the Board of Directors may require. It shall be the duty of the assistant treasurers to assist the Treasurer in the performance of the Treasurer's duties and generally to perform such other duties as may be delegated to them by the Board of



Directors.

---

## ARTICLE V

### Execution of Corporate Instruments, and Voting of Securities Owned by the Corporation

#### Section 1. Execution of Corporate Instruments.

(a) The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation.

(b) Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the corporation, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board, the President, any Vice President or the Secretary. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

(c) All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation, or in special accounts of the corporation, shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Section 2. Voting of Securities Owned by Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors or, in the absence of such authorization, by the Chairman of the Board (if there be such an officer appointed), or by the President, or by any Vice President.

## ARTICLE VI

### Shares of Stock

Section 1. Form and Execution of Certificates. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board (if there be such an officer appointed), or by the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile

signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

---

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to indemnify the corporation in such manner as it shall require and/or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 3. Transfers. Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a certificate or certificates for a like number of shares, properly endorsed.

Section 4. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the date on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

---

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the Delaware General Corporation Law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered (a) to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded, or (b) directly to the corporation, if authorized by the Board of Directors in the case of consents submitted by electronic transmission. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

---

## ARTICLE VII

### Other Securities of the Corporation

All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board or the President or any Vice President or such other person as may be authorized by the Board of Directors and the

corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signature of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or Assistant Treasurer of the corporation, or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon shall have ceased to be such officer of the corporation before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

---

## ARTICLE VIII

### Corporate Seal

The corporation shall have a common seal, upon which shall be inscribed:

*"Intel Corporation  
Incorporated March 1, 1989  
Delaware"*

In the event the corporation changes its name, the corporate seal shall be changed to reflect such new name.

## ARTICLE IX

### Indemnification of Officers, Directors, Employees and Agents

Section 1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a "*Proceeding*"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer,

employee, or agent (hereafter an "*Agent*"), shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended or interpreted (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement, and any interest, assessments, or other charges imposed thereon, and any federal, state, local, or foreign taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article) reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (hereinafter "*Expenses*"); provided, however, that except as to actions to enforce indemnification rights pursuant to Section 3 of this Article, the corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article shall be a contract right.

---

Section 2. Authority to Advance Expenses. Expenses incurred by an officer or director (acting in his capacity as such) in defending a Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding, provided, however, that if required by the Delaware General Corporation Law, as amended, such Expenses shall be advanced only upon delivery to the corporation of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the corporation as authorized in this Article or otherwise. Expenses incurred by other Agents of the corporation (or by the directors or officers not acting in their capacity as such, including service with respect to employee benefit plans) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

Section 3. Right of Claimant to Bring Suit. If a claim under Section 1 or 2 of this Article is not paid in full by the corporation within thirty (30) days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending a Proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. The burden of proving such a defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors,

independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 4. Provisions Nonexclusive. The rights conferred on any person by this Article shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate, agreement, or vote of the stockholders or disinterested directors is inconsistent with these Bylaws, the provision, agreement, or vote shall take precedence.

---

Section 5. Authority to Insure. The corporation may purchase and maintain insurance to protect itself and any Agent against any Expense, whether or not the corporation would have the power to indemnify the Agent against such Expense under applicable law or the provisions of this Article.

Section 6. Survival of Rights. The rights provided by this Article shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 7. Settlement of Claims. The corporation shall not be liable to indemnify any Agent under this Article (a) for any amounts paid in settlement of any action or claim effected without the corporation's written consent, which consent shall not be unreasonably withheld; or (b) for any judicial award if the corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 8. Effect of Amendment. Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.

Section 9. Subrogation. In the event of payment under this Article, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

Section 10. No Duplication of Payments. The corporation shall not be liable under this Article to make any payment in connection with any claim made against the Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder.

---

## ARTICLE X

### Notices

(a) Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, the same shall be given in writing, either (a) timely and duly deposited in the United States Mail, postage prepaid, and addressed to the stockholder's last known post office address as shown by the stock record of the corporation or its transfer agent or (b) by a form of electronic transmission consented to by the stockholder to whom the notice is given, except to the extent prohibited by Section 232(e) of the Delaware General Corporation Law. Any consent to receive notice by electronic transmission shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Any notice required to be given to any director may be given by the method hereinabove stated. Any such notice, other than one which is delivered personally, shall be sent to such post office address, facsimile number or electronic mail address as such director shall have filed in writing with the Secretary of the corporation, or, in the absence of such filing, to the last known post office address of such director. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(c) If no post office address of a stockholder or director be known, such notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 of Article I hereof. An affidavit executed by a duly authorized and competent employee of the corporation or the transfer agent or other agent of the corporation appointed with respect to the class of stock affected, specifying the name and post office address or the names and post office addresses of the stockholder or stockholders, director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same (or, for any stockholder or director to whom notice has been directed by electronic transmission, the form of electronic transmission and the facsimile number, electronic mail address or other location to which such notice was directed and the time at which such notice was directed to each such director or stockholder), shall be prima facie evidence of the statements therein contained.

(d) All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing. All notices given to stockholders by a form of electronic transmission, as above provided, shall be deemed to have been given: (a) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the stockholder. All notices given to directors by a form of electronic transmission, as above provided, shall be deemed to have been given when directed to the electronic mail address, facsimile number, or other location filed in writing by

the director with the Secretary of the corporation.

---

(e) The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such a stockholder or such director to receive such notice.

(f) Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these Bylaws, a waiver thereof in writing given by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

(g) Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(h) Whenever notice is to be given to the corporation by a stockholder under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, such notice shall be delivered to the Secretary at the principal executive offices of the corporation. If delivered by electronic mail or facsimile, the stockholder's notice shall be directed to the Secretary at the electronic mail address or facsimile number, as the case may be, specified in the company's most recent proxy statement.

## ARTICLE XI

### Amendments

Unless otherwise provided in the Certificate of Incorporation, these Bylaws may be repealed, altered or amended or new Bylaws adopted by written consent of the stockholders in the manner authorized by Section 8 of Article II, or at any meeting of the stockholders, either annual or special, by the affirmative vote of a majority of the stock entitled to vote at such meeting. The Board of Directors shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board of Directors) by unanimous written consent or at any annual, regular, or special meeting by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, term of office or



compensation of directors.

---

## ARTICLE XII

### Electronic Transmission

When used in these Bylaws, the terms "*written*" and "*in writing*" shall include any "*electronic transmission*," as defined in Section 232(c) of the Delaware General Corporation Law, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail.

---

***Alternative Formats:*** Rich Text / Word (.rtf), Text (.txt), EDGAR (.sgml), XML (.xml),  
et al.

---

*Copyright © 2003 Fran Finnegan & Company Inc. All Rights Reserved.  
[www.secinfo.com](http://www.secinfo.com) - Fri, 10 Jan 2003 19:16:59 GMT - Help at SEC Info*

---

Page Two

I again challenge the right of a Company to vote signed but unmarked Proxies, just because they are allowed so by making a bold statement in the Proxy Materials to that effect. It matters not whether on current issues or on unspecified "future issues" that may occur, it is unlawful to do so. I outlined the illegality of that statement in a former presentation. It follows:

If I notice a person gazing at merchandise in a show window, and starts away without buying, I might say "I notice you are not using your money, therefore I claim it to do what I want with it !" NO WAY does a statement give rights to another's property to use for themselves in ANY MANNER !

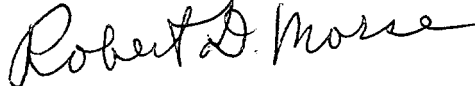
It is deplorable to observe such a rambling, repetitive 18 page presentation, together with unneeded copies of Company Certificate of Incorporation, and restatements thereto. I also note the request, as with others preceding, to "further consult with the SEC if they see fit to allow my Proposal be printed , without including the Proponent.

Again, I call attention to "The National Paperwork Reduction Act", and it appears that not many entities are applying it in their correspondence. The Act is available on the Internet by using the "search" menu.

6 copies to SEC  
1 @ to Intel and Attnys.  
Rhymes for Stress Relief,  
Not part of Presentation.

Sincerely,

Robert D. Morse



RECEIVED

2003 JAN 28 PM 4:06

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Robert D. Morse  
212 Highland Avenue  
Moorestown, NJ, 08057-2717

Ph: 856 235 1711  
January 17, 2003  
27

Securities & Exchange Commission  
Division of Corporate Finance  
Mail Stop 4-2  
450 Fifth Street, NW  
Washington, DC 20549

Re: Intel Corp.--Attn'ys.  
Letter to the SEC dated Jan. 13, 2003  
Copy received January 21, 2003.

Ladies and Gentlemen:

There appears to be the same yearly request from Intel Corporation that I prove having bought and held my 200 shares of stock for at least 1 year. Out of 20 or so other Corporations receiving my Proposal, theirs is the only one so far. This amounts to a nit-picking impediment to a legitimate Proposal ! Likewise, it disrupts someone from their other duties at TDWaterhouse to provide that info. I left it to them to compose and send such to Intel Corporation, a repetition of last year. It is an insult to their integrity not to accept the credentials provided. Who is going to need it ? The new time-money saving system of non-certificate registration is being disrupted., and the "Rules" on this are likewise, only an unnecessary impediment.

Now, on the subject of "States having plurality voting regulations" These Rules abolished the former word "Against" from Proxy voting cards ONLY on the vote for "Director". If the word was confusing, false and misleading, it is also so on the other Proposals. and only made so because of a pressure applied in those States and to the SEC to change an otherwise viable process, which benefits Management-Directors, who cannot lose an election under such system., there being no opposition Nominees. When is the SEC going to concede it being a "denial of right to dissent", and therefore is unconstitutional in the USA ? The SEC might ask: "Why was it necessary to delete [in 1979 ?], "Against" after many years of no-contest nor conflict ?"

Throughout the 18 page objection to printing my Proposal, the attorney for Intel Corporation stressed the "false and misleading, ambiguous, vague and indefinite, etc." aspects of the proposal. This is not so, it is plainly and correctly stated and understandable, and makes no deleteble remarks unless the SEC decides such is in order.

The request to delete because my statements "relate to the election of Directors" is unfounded. Of course it does relate, and the Company presents the matter to the Shareowners for a decision, thereby nullifying any objections on that basis.

These rhymes are for stress relief,  
not part of the presentation.

### THERE WAS

There was a crooked man,  
Who walked a crooked mile,  
He lived in a crooked house,  
Which he thought in style,  
Having used some beguile.  
Whoever it was that wrote this,  
Is now in a state of bliss,  
With a laid-back smile.

### TONY

Tony was a Welshman,  
Tony was a thief,  
Tony came to my house,  
And stole a leg of beef.  
I went to Tony's house,  
Tony was in bed.  
I cooked up the roast beef,  
And laid out quite a spread.

### THERE WAS A LITTLE GIRL

There was a little girl  
Who wore a little curl,  
Right in the middle of her forehead.  
When she was good,  
She was very, very good,  
And when she was bad she was torrid !

### PAY ATTENTION, AGAIN

Don't think me wrong, that I should mention,  
To get some learning, we must pay attention  
To what the teacher presents in class,  
Rather than ogling a guy or a lass.  
Forget during sessions about tossing a ball,  
Or listening for the bell, to get out in the hall.

---

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

March 10, 2003

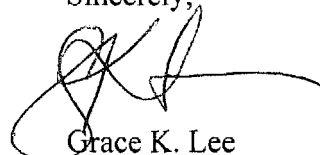
**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Intel Corporation  
Incoming letter dated January 13, 2003

The proposal requests that the board make particular revisions to its proxy materials.

There appears to be some basis for your view that Intel may exclude the proposal under rule 14a-8(f). We note that the proponent appears to have failed to supply, within 14 days of receipt of Intel's request, documentary support sufficiently evidencing that he continuously held Intel's securities for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if Intel omits the proposal from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative bases for exclusion upon which Intel relies.

Sincerely,

A handwritten signature in black ink, appearing to be "GK Lee", with a long horizontal flourish extending to the right.

Grace K. Lee  
Special Counsel