

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): March 24, 2020

OCIDENTAL PETROLEUM CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-9210
(Commission
File Number)

95-4035997
(IRS Employer
Identification No.)

5 Greenway Plaza, Suite 110
Houston, Texas
(Address of Principal Executive Offices)

77046
(Zip Code)

Registrant's Telephone Number, Including Area Code: (713) 215-7000

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$0.20 par value	OXY	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (CFR 240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement

On March 25, 2020, Occidental Petroleum Corporation (“Occidental” or the “Company”) entered into a Director Appointment and Nomination Agreement (the “Agreement”) with Carl C. Icahn, Andrew Langham, Nicholas Graziano, High River Limited Partnership, Hopper Investments LLC, Barberry Corp., Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Enterprises G.P. Inc., Icahn Enterprises Holdings L.P., IPH GP LLC, Icahn Capital LP, Icahn Onshore LP, Icahn Offshore LP and Beckton Corp. (collectively, the “Icahn Group”) and, solely with respect to the provisions applicable to the New Independent Director, Margarita Paláu-Hernández (the “New Independent Director”), pursuant to which Occidental (i) increased the size of the board of directors of Occidental (the “Board”) to fifteen directors and (ii) appointed Nicholas Graziano and Andrew N. Langham (collectively, the “Icahn Designees”) and the New Independent Director to the Board to fill the resulting vacancies, with such appointments effective immediately. Existing directors Spencer Abraham, Eugene L. Batchelder, Margaret M. Foran and Elisse B. Walter will not stand for re-election at the 2020 annual meeting of stockholders of Occidental (the “2020 Annual Meeting”) and accordingly will retire from the Board at the 2020 Annual Meeting. In addition, Occidental has agreed to include each of the Icahn Designees and the New Independent Director as part of Occidental’s slate of nominees for election to the Board at the 2020 Annual Meeting, which will consist of Stephen Chazen, each of the Icahn Designees, the New Independent Director and the following existing Occidental directors: Andrew F. Gould, Carlos M. Gutierrez, Vicki A. Hollub, William R. Klesse, Jack B. Moore, Avedick B. Poladian and Robert M. Shearer, in each case subject to the applicable rights of the Icahn Group and Occidental to designate replacements in certain circumstances as set forth in the Agreement.

From and after the date of the Agreement, so long as an Icahn Designee is a member of the Board, without the approval of the Icahn Designees who are then members of the Board, the Board will not increase the size of the Board above (i) prior to opening of the polls at the 2020 Annual Meeting, fifteen (15) directors and (ii) from and after the opening of the polls at the 2020 Annual Meeting, eleven (11) directors, in each case with each such director having one vote on all matters. In addition, the Icahn Group will be entitled, in the event any Icahn Designee or the New Independent Director resigns or for any reason fails to serve or is not serving as a director (subject to exceptions set forth in the Agreement, including as a result of such director not being nominated by the Company to stand for election at an annual meeting subsequent to the 2020 Annual Meeting or the termination of the Icahn Group’s designation rights with respect to such director in accordance with the Agreement), to designate a replacement for appointment to the Board on the terms set forth in the Agreement.

Until such time as one or more of the Icahn Designees are required to tender their resignations from the Board under the Agreement, the Icahn Designees then on the Board must approve (such approval not to be unreasonably withheld, delayed or conditioned) any new Chairman, except that in no event will the Icahn Designees condition any such approval on any of the following individuals being named as the new Chairman: (i) any Icahn Designee, (ii) the New Independent Director or (iii) certain individuals with material relationships with the Icahn Group or any controlled affiliate thereof.

On the date of the Agreement, (i) Mr. Graziano was appointed to an oversight committee (the “Oversight Committee”) of the Board, to be formed as promptly as practicable following the date of the Agreement, and the Audit Committee of the Board, (ii) Mr. Langham was appointed to the Oversight Committee and the Corporate Governance and Nominating Committee and (iii) Ms. Paláu-Hernández was appointed to the Executive Compensation Committee and the Environmental, Health and Safety Committee of the Board. So long as an Icahn Designee is a member of the Board, the Icahn Group will also have certain rights with respect to newly created committees as set forth in the Agreement. In addition, any Board consideration of appointment and employment of executive officers, mergers, acquisitions of material assets, dispositions of material assets, or other extraordinary transactions, such consideration, and voting with respect thereto, will take place only at the full Board level or in committees of which one of the Icahn Designees is a member.

The Icahn Group has withdrawn its slate of director nominees and stockholder proposals previously submitted to Occidental in connection with the 2020 Annual Meeting. In addition, the Icahn Group has agreed, by no later than March 26, 2020, to (i) withdraw and not renew its demand (the “220 Demand”) for books and records and other materials pursuant to Section 220 of the Delaware General Corporation Law (“DGCL”) and (ii) stipulate to the dismissal with prejudice of the appeal, and use reasonable best efforts to obtain Court approval of such stipulation of dismissal, of its pending appeal of the litigation before the Supreme Court of the State of Delaware relating to the 220 Demand.

If at any time the Icahn Group ceases to hold a “net long position”, as defined in the Agreement, in at least (i) 44,313,635 shares of the Company’s common stock, one of the Icahn Designees will, and the Icahn Group will cause one Icahn Designee to, promptly resign from the Board; and (ii) 22,156,817 shares of the Company’s common stock, (A) each of the Icahn Designees will, and the Icahn Group will cause each such Icahn Designee to, promptly resign from the Board and (B) the Icahn Group’s replacement rights with respect to the New Independent Director will terminate. Occidental is not required to include the Icahn Designees or the New Independent Director on its slate of director nominees at any annual meeting following the 2020 Annual Meeting.

Other than the Rights Agreement, dated as of March 12, 2020 between the Company and Equiniti Trust Company, as Rights Agent, so long as the Icahn Group holds “a net long position”, as defined in the Agreement, in at least 44,313,635 shares of the Company’s common stock, the Company will not adopt a Rights Plan, as defined in the Agreement, (i) with an “Acquiring Person” beneficial ownership threshold below 20.0% of the then-outstanding shares of the Company’s common shares and (ii) unless such Rights Plan provides that, if such Rights Plan is not ratified by the Company’s stockholders within one year of such Rights Plan being adopted, such Rights Plan will automatically expire.

In connection with the entry into the Agreement, Occidental amended and restated the By-laws (as defined below), effective immediately, as described under Item 5.03 of this report, which is incorporated by reference herein. The Company also agreed to recommend, and the Icahn Group agreed to vote in favor of, the adoption by Occidental stockholders at the 2020 Annual Meeting of certain amendments to the Charter (as defined below), as described under Item 5.03 of this report, which is incorporated by reference herein.

The Agreement also includes other customary voting, standstill and non-disparagement provisions. Absent an uncured breach of a material provision of the Agreement by Occidental, the standstill restrictions on the Icahn Group will remain in effect until the later of (i) the end of the 2020 Annual Meeting and (ii) such date as no Icahn Designee is on the Board and the Icahn Group no longer has any right to designate a replacement (including if the Icahn Group has irrevocably waived such right in writing).

Pursuant to the Company’s compensation program for non-employee directors, each of the Icahn Designees and the New Independent Director will receive (i) a pro rata portion of the 2019-2020 common stock equity award granted to non-employee directors and (ii) a pro rata portion of the 2019-2020 retainer paid to non-employee directors, in each case after giving effect to a 15% reduction in all remaining 2019-2020 non-employee director compensation that has been adopted by the Board.

The foregoing description is qualified in its entirety by reference to the full text of the Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

In connection with the entry into the Agreement, the Company and the Icahn Group have also entered into a Confidentiality Agreement, the form of which is included as Exhibit C to the Agreement, which is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

The description of the matters included under Item 1.01 are incorporated into this Item 5.02 by reference.

On March 24, 2020, as part of the Company’s efforts to reduce operating and corporate costs, the Board approved salary reductions for the Company’s executive officers. Effective April 1, 2020, each of the executive officers will be subject to a base salary cap of \$250,000.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

In connection with the entry into the Agreement, on March 25, 2020, the Board amended and restated its by-laws (as so amended and restated, the “By-laws”), effective immediately. The Board also intends to recommend that stockholders adopt governance enhancing amendments to the Company’s Restated Certificate of Incorporation, as amended (the “Charter”), at the 2020 Annual Meeting.

The By-Laws were amended as follows:

- **Uniform Advance Notice Period for Stockholder Proposals at Annual Meetings:** Article II, Section 2 and Article III, Section 2 of the By-laws were amended to implement a uniform advance notice period for all business to be brought before an annual meeting by stockholders. As amended, the notice stockholder proponents must provide for all business to be brought before an annual meeting must be delivered to or mailed to and received by the Company not less than 90 days nor more than 120 days prior to the anniversary of the immediately preceding annual meeting, or, if the annual meeting is called for a date not within 30 days of such anniversary, within 10 days of the day on which the date of the annual meeting is announced. The By-laws previously provided that a stockholder’s notice with respect to director elections must be delivered to or mailed to and received by the Company between September 1 and November 30 of the year preceding the annual meeting and that a stockholder’s notice related to business other than the election of directors must be delivered to or mailed to and received by the Company not less than 70 days nor more than 90 days prior to the anniversary of the immediately preceding annual meeting.
- **Facilitation of Stockholder Ability to Request a Special Meeting:** Article II, Section 3 of the By-laws was amended to:
 - Subject to the approval of a corresponding amendment to the Charter by stockholders at the 2020 Annual Meeting, reduce the minimum threshold required to call a special meeting from 25% to 15% of the Company’s outstanding shares of common stock.
 - Facilitate the participation of beneficial owners in a general solicitation by an initiating stockholder or group of stockholders to reach such minimum threshold by:
 - permitting an initiating stockholder or group of stockholders to request that the Board fix a record date to determine stockholders eligible to support the calling of a special meeting (while retaining the ability of an initiating stockholder or group of stockholders to reach the minimum threshold without requesting such a record date so long as it does not engage in a general solicitation to do so); and
 - limiting the information required to be provided to the Company in connection with a request to call a special meeting to the initiating stockholder or group of stockholders (rather than all stockholders joining in such request, as previously provided in the By-laws).
 - Align the information required to be provided by a stockholder nominating a director for election at a special meeting to be consistent with the information required to be provided by a stockholder nominating a director for election at an annual meeting.
- **Permit Stockholders to Fix the Size of the Board:** Article III, Section 1 of the By-laws was amended to provide that stockholders, in addition to the Board, are entitled to fix the size of the Board from time to time by a resolution duly adopted at a stockholder meeting or by written consent.
- **Permit Stockholders to Remove and Replace Directors and Fill Vacancies:** Article III, Section 2 of the By-laws was amended to provide that, in addition to the Board, stockholders may remove and replace directors and fill newly created directorships resulting from an increase in the number of directors or any other vacancy on the Board by a resolution duly adopted at a stockholder-requested special meeting or by written consent.
- **Other Amendments:** Other clarifying and conforming amendments were also made to the By-laws.

The foregoing description is qualified in its entirety by reference to the full text of the By-laws, a copy of which is attached hereto as Exhibit 3.1 and is incorporated by reference herein.

Item 7.01. Regulation FD Disclosure.

On March 25, 2020, the Company issued a press release with respect to the Agreement. The press release, furnished as Exhibit 99.1 hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated By-laws of Occidental Petroleum Corporation as of March 25, 2020
10.1	Director Appointment and Nomination Agreement dated March 25, 2020 by and among the Icahn Group, Occidental and, solely with respect to the provisions applicable to the New Independent Director, Margarita Paláu-Hernández
99.1	Press Release dated March 25, 2020
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

Additional Information and Where to Find It

The Company intends to file with the U.S. Securities and Exchange Commission (“SEC”) a proxy statement on Schedule 14A, containing a form of WHITE proxy card, with respect to its solicitation of proxies for the Company’s 2020 Annual Meeting of Stockholders. This communication is not a substitute for any proxy statement or other document that the Company may file with the SEC in connection with any solicitation by the Company.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) FILED BY THE COMPANY AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT ANY SOLICITATION BY THE COMPANY. Investors and security holders may obtain copies of these documents and other documents filed with the SEC by the Company free of charge through the website maintained by the SEC at www.sec.gov. Copies of the documents filed by the Company will also be available free of charge by accessing the Company’s website at www.oxy.com.

Participants

The Company, its directors and executive officers and other members of management and employees are or will be participants in the solicitations of proxies by the Company. Information about the Company’s executive officers and directors, and their ownership of the Company by security holdings or otherwise, is available in the Company’s Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the SEC on February 28, 2020, in its proxy statement for the 2019 Annual Meeting which was filed with the SEC on March 28, 2019 and in its Current Reports on Form 8-K filed with the SEC on January 7, 2020 and March 24, 2020. To the extent holdings of the Company’s securities reported in the proxy statement for the 2019 Annual Meeting or in such Form 8-K have changed, such changes have been or will be reflected on Statements of Change in Ownership on Forms 3, 4 or 5 filed with the SEC. These documents are or will be available free of charge at the SEC’s website at www.sec.gov.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OCCIDENTAL PETROLEUM CORPORATION

By: /s/ Nicole E. Clark
Nicole E. Clark
Vice President, Deputy General Counsel and Corporate Secretary

Date: March 25, 2020

**AMENDED AND RESTATED
BY-LAWS
OF
OCCIDENTAL PETROLEUM CORPORATION
(hereinafter called the "Corporation")**

ARTICLE I

OFFICES

SECTION 1. *Registered Office.* The registered office of the Corporation shall be in the State of Delaware.

SECTION 2. *Other Offices.* The Corporation 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.

ARTICLE II

MEETING OF STOCKHOLDERS

SECTION 1. *Place and Conduct of Meetings.* Meetings of the stockholders for the election of directors or for the transaction of only such other business as may properly be brought before the meeting in accordance with these By-laws shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Chairman of such meetings shall have plenary power and authority with respect to all matters relating to the conduct thereof including, without limitation, the authority to limit the amount of time which may be taken by any stockholder or stockholders, the authority to appoint and be advised by a parliamentarian, and the authority to appoint and to instruct a sergeant or sergeants at arms.

SECTION 2. *Annual Meetings.* The Annual Meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, for the purpose of electing directors and for the transaction of only such other business as may properly be brought before the meeting in accordance with these By-laws.

To be properly brought before the Annual Meeting, business must be either (a) specified in the notice of Annual Meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (b) otherwise properly brought before the Annual Meeting by or at the direction of the Board of Directors, or (c) other than the election of directors (which is addressed in *Article III*), otherwise properly brought before the Annual Meeting by a stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this *Section 2* and on the record date for the determination of stockholders entitled to vote at such Annual Meeting and (ii) who complies with the notice procedures set forth in this *Section 2*.

In addition to any other applicable requirements, for business to be properly brought before an Annual Meeting by a stockholder, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a stockholder's notice related to business other than the election of directors (which is addressed in *Article III*) must be delivered to or mailed to and received at the principal executive offices of the Corporation, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; *provided, however*, that in the event that the Annual Meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure was made, whichever first occurs. In no event shall the public announcement of an adjournment or postponement of an Annual Meeting commence a new time period for the giving of a stockholder's notice as described above.

To be in proper written form, a stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the Annual Meeting (i) a brief description of the business desired to be brought before the Annual Meeting, the reasons for conducting such business at the Annual Meeting and any material interest in such business of the stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (ii) the name and record address of the stockholder proposing such business, (iii) the class, series and number of shares of the Corporation which are beneficially owned by the stockholder, (iv) a description of all arrangements or understandings between the stockholder and any other person or persons (including their names) in connection with such business, (v) whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends to distribute proxy materials, and (vi) a representation that the stockholder intends to appear, in person or by another person authorized in accordance with the General Corporation Law of the State of Delaware to act as proxy for the stockholder, at the Annual Meeting to present such business.

Notwithstanding anything in the By-laws to the contrary, no business shall be conducted at the Annual Meeting except in accordance with the procedures set forth in this *Section 2*; provided, however, that nothing in this *Section 2* shall be deemed to preclude discussion by any stockholder of any business properly brought before the Annual Meeting.

The Chairman of an Annual Meeting shall, if the facts warrant, determine and declare to the Annual Meeting that business was not properly brought before the Annual Meeting in accordance with the provisions of this *Section 2*, and if he should so determine, he shall so declare to the Annual Meeting and any such business not properly brought before the Annual Meeting shall not be transacted.

Written notice of the Annual Meeting stating the place, date and hour of the Annual Meeting shall be given to each stockholder entitled to vote at such meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting.

SECTION 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation, Special Meetings of Stockholders, for any purpose or purposes, may be called by the Board of Directors or the Chairman of the Board. Subject to *subsections (a) - (h)* of this *Section 3*, a Special Meeting of Stockholders shall be called by the Secretary upon the written request of the record holders of at least 15% (or such other percentage as may be prescribed by the Certificate of Incorporation from time to time) of the outstanding common stock of the Corporation (the "Requisite Percent"). Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting.

(a) In order for a Stockholder Requested Special Meeting (as defined in this By-law) to be called, one or more requests for a Special Meeting must be signed by the Requisite Percent of record holders (or their duly authorized agents) and delivered to the Secretary (each, a "Special Meeting Request," collectively, the "Special Meeting Requests"). The Special Meeting Request(s) shall be sent to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. If a record holder is the nominee for more than one beneficial owner of shares of common stock of the Corporation, the record holder may deliver a Special Meeting Request pursuant to this *Section 3* solely with respect to the shares owned by the beneficial owner who is directing the record holder to sign such Special Meeting Request.

(b) Any stockholder (an "Initiating Stockholder") seeking to engage in a solicitation of ten (10) or more persons (as the term "solicitation" is defined under Regulation 14A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or any successor regulation) to attain the Requisite Percent (a "Public Solicitation") may engage in such a solicitation only if the Initiating Stockholder shall first deliver to the Secretary a request that the Board of Directors fix a record date to determine the stockholders entitled to deliver Special Meeting Requests in connection with such Public Solicitation (the "Requisite Percent Solicitation Record Date"). The request shall be sent to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. The request for a Requisite Percent Solicitation Record Date shall contain the information set forth or identified in *subsection (c)* of this *Section 3*. Following delivery of a request for a Requisite Percent Solicitation Record Date, the Board of Directors shall, by the later of (x) ten (10) days after delivery of such request and (y) five (5) days after delivery of all information required by the Corporation to determine the validity of such request or to determine whether the request relates to a matter that may be acted on at a Stockholder Requested Special Meeting, determine the validity of such request and, if appropriate, adopt a resolution fixing the Requisite Percent Solicitation Record Date. The Requisite Percent Solicitation Record Date shall be no more than ten (10) days after the date upon which the resolution fixing the Requisite Percent Solicitation Record Date is adopted by the Board of Directors and shall not precede the date such resolution is adopted. If a valid request for a Requisite Percent Solicitation Record Date has been duly delivered to the Secretary but no Requisite Percent Solicitation Record Date has been fixed by the Board of Directors by the date required by the fourth sentence of this *subsection (b)*, the Requisite Percent Solicitation Record Date shall be the close of business on the tenth (10th) day after delivery of the valid request for the Requisite Percent Solicitation Record Date to the Secretary. To be valid, any Special Meeting Request that has been the subject of a Public Solicitation must be delivered to the Secretary no earlier than the applicable Requisite Percent Solicitation Record Date and no later than the sixtieth (60th) day after the applicable Requisite Percent Solicitation Record Date.

(c) The request for a Requisite Percent Solicitation Record Date required by *subsection (b)* of this *Section 3* in connection with a Public Solicitation shall (i) be delivered to the Secretary of the Corporation by the Initiating Stockholder, who must be a record holder of the Corporation's common stock at the time the request is delivered, (ii) contain a representation that such Initiating Stockholder plans to engage in a Public Solicitation to attain the Requisite Percent, (iii) set forth a statement of the specific purpose(s) of the Special Meeting, the matters proposed to be acted on at the Special Meeting and the reasons for conducting such business at the Special Meeting, (iv) bear the date of signature of such Initiating Stockholder, (v) set forth (A) the name and address, as they appear in the Corporation's stock ledger, of such Initiating Stockholder, and (B) the class, if applicable, and number of shares of stock of the Corporation that are owned of record and beneficially by such Initiating Stockholder, (vi) set forth any material interest of such Initiating Stockholder in the business desired to be brought before the Special Meeting, (vii) set forth all information relating to such Initiating Stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act or any successor regulation and (viii) contain (A) the information, if applicable, which must be set forth in a stockholder's notice as required by *Article III, Section 2* of these By-laws, and the agreements described in *subsection (d)(vii)* of *Article III, Section 15*, in the case of business involving the election of directors, and (B) the information, if applicable, which must be set forth in a stockholders' notice as required by *Article II, Section 2* of these By-laws, in the case of business other than the election of directors, and in the case of clauses (A) and (B), such information shall be provided with respect to the Initiating Stockholder and each person that is part of a "group" (within the meaning of Section 13(d) of the Exchange Act and the rules and regulations thereunder) with the Initiating Stockholder. The Corporation may require any Initiating Stockholder (and any other person that is part of a group with the Initiating Stockholder) to furnish such other information as may be requested by the Corporation to determine the validity of any request for a Requisite Percent Solicitation Record Date, the validity of any subsequently delivered Special Meeting Request, or whether any such request relates to a matter that may be acted on at a Stockholder Requested Special Meeting.

(d) Notwithstanding anything to the contrary set forth above, if one or more persons attain the Requisite Percent without engaging in a Public Solicitation, (x) the related Special Meeting Request must be signed by record holders (or their duly authorized agents) that hold shares representing the Requisite Percent as of the date the last Special Meeting Request is delivered to the Secretary of the Corporation, (y) the information required under clauses (iii) through (viii) of the preceding *subsection (c)* of this *Section 3* shall be provided with respect to each stockholder submitting the Special Meeting Request (or the beneficial owner who is directing the stockholder of record to submit such Special Meeting Request) at the time such Special Meeting Request is delivered to the Secretary of the Corporation pursuant to *subsection (a)* of this *Section 3*, and (z) the Corporation may require any such stockholder delivering a Special Meeting Request without engaging in a Public Solicitation to furnish such other information as may be requested by the Corporation to determine the validity of any Special Meeting Request, or whether such Special Meeting Request relates to a matter that may be acted on at a Stockholder Requested Special Meeting.

(e) A stockholder may revoke his, her or its Special Meeting Request or request for a Requisite Percent Solicitation Record Date at any time by written revocation delivered to the Secretary.

(f) The Secretary shall not be required to call a Special Meeting upon stockholder request (a "Stockholder Requested Special Meeting") if (i) the action that is the subject of the Special Meeting Request(s) relates to an item of business that is not a proper subject for stockholder action under applicable law, (ii) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held not later than ninety (90) days after the Secretary's receipt of the Special Meeting Request(s) and the purpose(s) of such meeting include the purpose(s) specified in the Special Meeting Request(s) or (iii) an annual or special meeting of stockholders was held not less than ninety (90) days prior to the Secretary's receipt of the Special Meeting Request(s) and the purpose(s) of such meeting included the purpose(s) specified in the Special Meeting Request(s) with such determination, in the case of each of clause (ii) and (iii), being made in good faith by the Board of Directors. The Board of Directors shall have the exclusive power to interpret the provisions of this *Section 3* and make all determinations deemed necessary or advisable for the administration thereof, in each case to the fullest extent permitted by law. All such actions, calculations, interpretations, and determinations that are done or made by the Board of Directors in good faith, shall be final, conclusive, and binding on the Corporation and its stockholders, in each case to the fullest extent permitted by law.

(g) A Stockholder Requested Special Meeting shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than ninety (90) days after the Secretary's receipt of the properly submitted Special Meeting Request(s).

(h) Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting; provided, further, that such purpose(s) of, and business to be transacted at, such Stockholder Requested Special Meeting may include the removal and replacement of directors (with or without cause), the filling of any newly created directorship resulting from an increase in the number of directors or any other vacancy on the Board of Directors or any other business that could also properly be brought for stockholder action before any Annual Meeting in each case of this second proviso, to the extent permitted by the Certificate of Incorporation and applicable law.

SECTION 4. *Quorum.* Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the Chairman of such meeting or a majority of the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

SECTION 5. *Voting.* Unless otherwise required by law, the Certificate of Incorporation or these By-laws, any question brought before any meeting of stockholders shall be decided by the affirmative vote of a majority of the shares present in person or by proxy at the meeting and entitled to vote on the subject matter. Unless otherwise provided in the Certificate of Incorporation, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. No vote at any meeting of stockholders need be by written ballot unless the Board of Directors, in its discretion, or the officer of the Corporation presiding at the meeting, in his discretion, specifically directs the use of a written ballot.

SECTION 6. *List of Stockholders Entitled to Vote.* The officer of the Corporation 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 the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

SECTION 7. *Stock Ledger.* The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by *Section 6* of this *Article II* or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 8. *Voting Procedures and Inspectors of Election.* The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting.

SECTION 9. *Action by Written Consent.* 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 the stockholders or may be effected by a consent or consents in writing by the stockholders as provided by, and subject to the limitations in, the Certificate of Incorporation. In the event of the delivery, in the manner provided in the Certificate of Incorporation and applicable law, to the Corporation of a consent or consents to take corporate action in writing without a meeting and/or any related revocation or revocations, the Corporation may, and, if required by the Certificate of Incorporation, shall, designate an inspector or inspectors to discharge such duties as are contemplated or required by the Certificate of Incorporation.

DIRECTORS

SECTION 1. *Number and Election of Directors.* Subject to the rights, if any, of holders of preferred stock issued by the Corporation to elect directors of the Corporation, the Board of Directors shall consist of one or more directors, the number of which shall be fourteen (14) until changed by resolution duly adopted by the Board of Directors from time to time or by resolution duly adopted by the stockholders, except that in no case will a decrease in the number of directors shorten the term of any incumbent director. Except as provided in *Section 3* of this *Article III* and subject to *Section 12* of this *Article III*, directors shall be elected by a majority of the votes cast at Annual Meetings of Stockholders and each director so elected shall hold office until his successor is duly elected and qualified, or until his earlier death, disqualification, resignation or removal; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of the stockholders for which the number of nominees exceeds the number of directors to be elected. No person shall be eligible for election as a director of the Corporation who shall have reached the age of seventy-five (75) at the date of such election, unless such requirement shall have been unanimously waived by the members of the Corporate Governance, Nominating and Social Responsibility Committee and such Committee's action shall have been ratified and approved by a majority of the disinterested directors on the Board of Directors. Directors need not be stockholders.

SECTION 2. *Nominations of Directors at an Annual Meeting.* Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors at an Annual Meeting, except as may be otherwise provided in the Certificate of Incorporation of the Corporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors of the Corporation may be made at any Annual Meeting (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this *Section 2* and on the record date for the determination of stockholders entitled to vote at the Annual Meeting and (ii) who complies with the notice procedures set forth in this *Section 2* or (c) pursuant to *Section 15*.

In addition to any other applicable requirements, for a nomination to be properly made by a stockholder pursuant to this *Section 2* or *Section 15*, the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely pursuant to this *Section 2*, a stockholder's notice to the Secretary must be delivered or mailed to and received at the principal executive offices of the Corporation, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding Annual Meeting; *provided, however*, that in the event that the Annual Meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the Annual Meeting was mailed or such public disclosure was made, whichever first occurs. In no event shall the public announcement of an adjournment or postponement of an Annual Meeting commence a new time period for the giving of a stockholder's notice as described above. To be in proper written form, a stockholder's notice to the Secretary pursuant to this *Section 2* must set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person, and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to the Rules and Regulations of the Securities and Exchange Commission under Section 14 of the Exchange Act, and (b) as to the stockholder giving the notice, (i) the name and record address of such stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder, (iii) a description of all arrangements or understandings between the stockholder or the beneficial owner, if any, on whose behalf the nomination is made and each proposed nominee and any other person or persons (including their names) pursuant to which the nominations are to be made by such stockholder, (iv) whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends to distribute proxy materials, (v) a representation that the stockholder intends to appear, in person or by another person authorized in accordance with the General Corporation Law of the State of Delaware to act as proxy for the stockholder, at the Annual Meeting to nominate the persons named in the stockholder's notice, and (vi) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to the Rules and Regulations of the Securities and Exchange Commission under Section 14 of the Exchange Act. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

No person shall be eligible for election as a director of the Corporation at an Annual Meeting unless nominated in accordance with the procedures set forth in this *Section 2* or *Section 15*. If the Chairman of the Annual Meeting determines that a nomination was not made in accordance with this *Section 2* or *Section 15*, the Chairman shall declare to the meeting that the nomination was defective and the defective nomination shall be disregarded.

Unless otherwise prescribed by law, the Certificate of Incorporation or *Section 3 of Article II*, nothing in this *Section 2* shall prohibit the removal or replacement of directors (with or without cause) or the filling of any newly created directorship resulting from an increase in the number of directors or any other vacancy on the Board of Directors at a Stockholder Requested Special Meeting or pursuant to an action by written consent or consents of the stockholders.

SECTION 3. *Vacancies.* Any newly created directorship resulting from an increase in the number of directors or any other vacancy on the Board of Directors may be filled by a majority of the Board of Directors then in office, even if less than a quorum, or by a sole remaining director, or by resolution duly adopted by the stockholders. Any director elected to fill a newly created directorship resulting from an increase in the number of directors or any other vacancy shall hold office for the term specified in the Certificate of Incorporation.

SECTION 4. *Duties and Powers.* The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

SECTION 5. *Meetings.* The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman of the Board, if there be one, the Chief Executive Officer, the President, or any three directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight hours before the date of the meeting, by telephone, telegram, email or telecopy on twenty-four hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

SECTION 6. *Quorum.* Except as may be otherwise specifically provided by law, at all meetings of the Board of Directors or of any committee thereof, a majority of the members of the entire Board of Directors or of the said committee shall constitute a quorum for the transaction of business; and the act of a majority of the directors or members of the committee present at any meeting at which there is a quorum shall be the act of the Board of Directors or of the said committee, as the case may be. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors or members of the committee if any action taken is approved by at least a majority of the required quorum for that meeting. If a quorum shall not be present at any meeting of the Board of Directors or of any committee thereof, the directors or members of the committee present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

SECTION 7. *Actions of Board.* 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 the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

SECTION 8. *Meetings by Means of Conference Telephone.* Members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this *Section 8* shall constitute presence in person at such meeting.

SECTION 9. *Committees.* The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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 any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Meetings of any committee may be called by the Chairman of such committee, if there be one, or by any two members thereof other than such Chairman. Notice thereof stating the place, date and hour of the meeting shall be given to each member by mail not less than forty-eight hours before the date of the meeting; by telephone, telegram or teletype on twenty-four hours' notice; or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. Each committee shall keep regular minutes and report to the Board of Directors when required.

SECTION 10. *Compensation.* The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors and/or a stated annual fee as a director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

SECTION 11. *Interested Directors.* No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

SECTION 12. *Resignation of Directors.* In an uncontested election, any nominee for director who receives a greater number of votes “against” his or her election than votes “for” such election (a “Majority Against Vote”) shall promptly tender his or her resignation following certification of the stockholder vote by the Inspector of Elections. Unless accepted earlier by the Board of Directors, such resignation shall become effective on October 31st of the year of the election.

Notwithstanding the obligation to resign for a Majority Against Vote, any director may resign at any time for any other reason. In such instance, the resignation shall be effective upon giving written notice to the Secretary, unless the notice specifies a later time for such resignation to become effective, and no action shall be required by the Board of Directors for the resignation to become effective. If the resignation of a director is effective at a future time, the Board of Directors may elect a successor prior to such effective time to take office when such resignation becomes effective.

SECTION 13. *Chairman of the Board of Directors.* The Board of Directors shall annually elect one of its Independent Directors (as defined in the Corporation’s Corporate Governance Policies adopted from time to time) to be Chairman of the Board of Directors. The Chairman shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall also perform such other duties and exercise such other powers as from time to time may be assigned to him by these By-laws or by the Board of Directors. During the absence or disability of the Chairman of the Board of Directors for any reason, the Vice Chairman of the Board of Directors shall exercise the powers and discharge the duties of the Chairman. If there is no Vice Chairman, or, if the Vice Chairman is absent or unable to perform such duties, such other Independent Director as the Board of Directors may designate shall exercise the powers and discharge the duties of the Chairman.

SECTION 14. *Vice Chairman of the Board of Directors.* The Board of Directors may annually elect one of its Independent Directors to be Vice Chairman of the Board of Directors. The Vice Chairman of the Board of Directors shall perform the duties specified in *Section 13* above in the absence or disability of the Chairman of the Board of Directors and shall perform such duties and may exercise such powers as from time to time may be assigned to him by the Board of Directors or the Chairman of the Board of Directors.

SECTION 15. *Stockholder Nominations Included in the Corporation’s Proxy Materials.*

(a) Subject to the provisions of this *Section 15*, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any Annual Meeting of Stockholders: (i) the name of any person nominated for election (the “Stockholder Nominee”), which shall also be included on the Corporation’s form of proxy and ballot, by any Eligible Stockholder (as defined below) or group of up to 20 Eligible Stockholders that, as determined by the Board of Directors or its designee acting in good faith, has (individually and collectively, in the case of a group) satisfied all applicable conditions and complied with all applicable procedures set forth in this *Section 15* (such Eligible Stockholder or group of Eligible Stockholders being a “Nominating Stockholder”); (ii) disclosure about the Stockholder Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement; (iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of the Stockholder Nominee’s election to the Board of Directors (subject, without limitation, to *Section 15(e)(ii)*), if such statement does not exceed 500 words; and (iv) any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of the Stockholder Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this *Section 15*.

(b) (i) The Corporation shall not be required to include in the proxy statement for an Annual Meeting of Stockholders more Stockholder Nominees than that number of directors constituting 20% of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this *Section 15* (rounded down to the nearest whole number, but not less than two) (the "Maximum Number"). The Maximum Number for a particular Annual Meeting shall be reduced by: (1) Stockholder Nominees whose nominations are subsequently withdrawn; (2) Stockholder Nominees who the Board of Directors itself decides to nominate for election at such Annual Meeting; (3) the number of incumbent directors or director candidates that in either case will be included in the Corporation's proxy statement for an Annual Meeting of Stockholders as an unopposed (by the Corporation) nominee pursuant to any agreement, arrangement or other understanding with any stockholder or group of stockholders; and (4) the number of incumbent directors who had been Stockholder Nominees, or nominees of a stockholder pursuant to the advance notice requirements set forth in *Section 2* of this *Article III*, at any of the preceding three Annual Meetings of Stockholders and whose reelection at the upcoming Annual Meeting is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in *Section 15(d)* but before the date of the Annual Meeting and the Board of Directors resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Stockholder Nominees pursuant to this *Section 15* for any Annual Meeting of Stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Stockholder Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of shares of the Corporation's common stock that each Nominating Stockholder disclosed as owned in its Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Stockholder Nominee. If, after the deadline for submitting a Nomination Notice as set forth in *Section 15(d)*, a Nominating Stockholder becomes ineligible or withdraws its nomination or a Stockholder Nominee becomes ineligible or unwilling to serve on the Board of Directors, whether before or after the mailing of the definitive proxy statement, the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the Stockholder Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee will not be included as a Stockholder Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the Annual Meeting.

(c) (i) An “Eligible Stockholder” is a person who has either (1) been a record holder of the shares of common stock of the Corporation used to satisfy the eligibility requirements in this *Section 15(c)* continuously for the three-year period specified in *subsection (c)(ii)* of this *Section 15* below or (2) provides to the Secretary of the Corporation, within the time period referred to in *Section 15(d)*, evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors or its designee, acting in good faith, determines acceptable.

(ii) An Eligible Stockholder or group of up to 20 Eligible Stockholders may submit a nomination in accordance with this *Section 15* only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) (as adjusted for any stock splits, stock dividends or similar events) of shares of the Corporation’s common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number of shares through the date of the Annual Meeting. The following shall be treated as one Eligible Stockholder if such Eligible Stockholder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Board of Directors or its designee that demonstrates compliance with the following criteria: (1) funds under common management and investment control; (2) funds under common management and funded primarily by the same employer; or (3) a “family of investment companies” or a “group of investment companies” (each as defined in the Investment Company Act of 1940, as amended). For the avoidance of doubt, in the event of a nomination by a group of Eligible Stockholders, any and all requirements and obligations for a given Eligible Stockholder that are set forth in this *Section 15*, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Stockholders at any time prior to the Annual Meeting of Stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The “Minimum Number” of shares of the Corporation’s common stock means 3% of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any filing by the Corporation with the SEC prior to the submission of the Nomination Notice.

(iv) For purposes of this *Section 15*, an Eligible Stockholder “owns” only those outstanding shares of the Corporation’s common stock as to which such Eligible Stockholder possesses both: (1) the full voting and investment rights pertaining to such shares and (2) the full economic interest in (including the opportunity for profit from and the risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (x) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding capital stock of Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder’s or any of its affiliates’ full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliates, but not including any hedging with respect to currency risk, interest-rate risk or, using a broad index-based hedge, equity risk. An Eligible Stockholder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Stockholder’s ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Stockholder. An Eligible Stockholder’s ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares provided that the Eligible Stockholder has the power to recall such loaned shares on five business days’ notice and provides a representation that it (1) will promptly recall such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation’s proxy materials and (2) will continue to hold such shares through the date of the Annual Meeting. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the Corporation are “owned” for these purposes shall be determined by the Board of Directors or its designee acting in good faith. For purposes of this *Section 15(d)(iv)*, the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

(v) No Eligible Stockholder shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any Eligible Stockholder appears as a member of more than one group, such Eligible Stockholder shall be deemed to be a member of only the group that has the largest ownership position as reflected in the Nomination Notice.

(d) To nominate a Stockholder Nominee pursuant to this *Section 15*, the Nominating Stockholder must submit to the Secretary of the Corporation all of the following information and documents (collectively, the "Nomination Notice"), not less than 120 days nor more than 150 days prior to the anniversary of the date that the Corporation mailed its proxy statement for the prior year's Annual Meeting; provided, however, that if (and only if) the Annual Meeting is not scheduled to be held within a period that commences 30 days before the first anniversary date of the preceding year's Annual Meeting of Stockholders and ends 30 days after the first anniversary date of the preceding year's Annual Meeting of Stockholders (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is 180 days prior to such Other Meeting Date or the tenth day following the date such Other Meeting Date is first publicly announced or disclosed (in no event shall the adjournment or postponement of an Annual Meeting, or the announcement thereof, commence a new time period (or extend any time period) for the giving of the Nomination Notice):

(i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven (7) calendar days prior to the date of the Nomination Notice, the Nominating Stockholder owns, and has continuously owned for the preceding three (3) years, the Minimum Number of shares, and the Nominating Stockholder's agreement to provide, within five (5) business days after the record date for the Annual Meeting, written statements from the record holder and intermediaries verifying the Nominating Stockholder's continuous ownership of the Minimum Number of shares through the record date;

(ii) immediate notice if the Nominating Stockholder ceases to own the Minimum Number of shares prior to the date of the Annual Meeting;

(iii) a copy of the Schedule 14N (or any successor form) relating to the Stockholder Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with Securities and Exchange Commission rules;

(iv) the written consent of each Stockholder Nominee to being named in the Corporation's proxy statement, form of proxy and ballot as a nominee and to serving as a director if elected;

(v) a written notice of the nomination of such Stockholder Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including, for the avoidance of doubt, each group member): (1) the information that would be required to be set forth in a stockholder's notice of nomination pursuant to *Section 2* of this *Article III*; (2) a description of any agreement, arrangement or understanding (including, regardless of the form of settlement, any derivative, long or short positions, profit interests, forwards, futures, swaps, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions and borrowed or loaned shares) that has been entered into by or on behalf of, or any other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such Nominating Stockholder with respect to the Corporation's securities; (3) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N; (4) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation; (5) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election to the Board of Directors at the Annual Meeting any person other than such Nominating Stockholder's Stockholder Nominee(s); (6) a representation and warranty that the Nominating Stockholder has not engaged in and will not engage in a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act (without reference to the exception in Section 14a-1(l)(2)(iv)) with respect to the Annual Meeting, other than with respect to such Nominating Stockholder's Stockholder Nominee(s) or any nominee of the Board of Directors; (7) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Stockholder Nominee at the Annual Meeting (8) a representation and warranty that the Stockholder Nominee's candidacy or, if elected, board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded (the "Stock Exchange Rules"); (9) a representation and warranty that the Stockholder Nominee: (A) qualifies as independent under the Stock Exchange Rules; (B) meets the audit committee and compensation committee independence requirements under the Stock Exchange Rules; (C) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule); (D) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); (E) meets the director qualifications set forth in *Section 1* of this *Article III*; and (F) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Stockholder Nominee; (10) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in *Section 15(c)*; (11) a representation and warranty that the Nominating Stockholder will continue to satisfy the eligibility requirements described in *Section 15(c)* through the date of the Annual Meeting; (12) a representation as to the Nominating Stockholder's intentions with respect to continuing to hold the Minimum Number of shares for at least one year following the Annual Meeting; (13) details of any position of the Stockholder Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the principal products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three years preceding the submission of the Nomination Notice; (14) if desired, a statement for inclusion in the proxy statement in support of the Stockholder Nominee's election to the Board of Directors, provided that such statement shall not exceed 500 words and shall fully comply with Section 14 of the Exchange Act and the rules and regulations thereunder; and (15) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination; and

(vi) an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee acting in good faith, pursuant to which the Nominating Stockholder (including each group member) agrees: (1) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election; (2) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Stockholder Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under any rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation; (3) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or the Stockholder Nominee nominated by such Nominating Stockholder with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice; (4) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or Stockholder Nominee to comply with, or any breach or alleged breach of, its, or his or her, as applicable, obligations, agreements or representations under this *Section 15*; (5) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or due to a subsequent development omits a material fact necessary to make the statements made not misleading), to promptly (and in any event within 48 hours of discovering such misstatement or omission) notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission; and (6) in the event that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in *Section 15(c)*, to promptly notify the Corporation; and

(vii) an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, acting in good faith, by the Stockholder Nominee: (1) to provide to the Corporation such other information, including completion of the Corporation's director nominee questionnaire, as it may reasonably request; (2) that the Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Policies and Code of Business Conduct and any other Corporation policies and guidelines applicable to directors; and (3) that the Stockholder Nominee is not and will not become a party to (A) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity (a "Compensation Arrangement") in connection with such person's nomination or candidacy for director of the Corporation that has not been disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice, (B) any Compensation Arrangement in connection with service or action as a director of the Corporation, (C) any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been disclosed to the Corporation prior to or concurrently with the Nominating Stockholder's submission of the Nomination Notice or (D) any Voting Commitment that could limit or interfere with the Nominee's ability to comply, if elected as a director of the Corporation, with his or her fiduciary duties under applicable law.

The information and documents required by this *Section 15(d)* shall be (i) provided with respect to and executed by each group member of the Nominating Stockholder; and (ii) provided with respect to the persons specified in Instructions 1 and 2 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this *Section 15(d)* (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) (i) Notwithstanding anything to the contrary contained in this *Section 15*, the Corporation may omit from its proxy statement any Stockholder Nominee, and any information concerning such Stockholder Nominee (including a Nominating Stockholder's statement in support), and in such case no vote on such Stockholder Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Stockholder Nominee, if: (1) the Corporation receives a notice that a stockholder intends to nominate a candidate for director at the Annual Meeting pursuant to the advance notice requirements set forth in *Section 2* of this *Article III* without such stockholder's notice expressly electing to have such director candidate(s) included in the Corporation's proxy statement pursuant to this *Section 15*; (2) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the Annual Meeting to present the nomination submitted pursuant to this *Section 15* or the Nominating Stockholder withdraws its nomination; (3) the Board of Directors, acting in good faith, determines that such Stockholder Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with these By-laws or the Certificate of Incorporation or any applicable law, rule or regulation to which the Corporation is subject, including the Stock Exchange Rules; (4) the Stockholder Nominee was nominated for election to the Board of Directors pursuant to this *Section 15* at one of the Corporation's two preceding Annual Meetings of Stockholders and either withdrew from or became ineligible or unavailable for election at such Annual Meeting or received a vote of less than 25% of the shares of common stock entitled to vote for such Stockholder Nominee; (5) the Stockholder Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or (6) the Corporation is notified, or the Board of Directors or its designee acting in good faith determines, that a Nominating Stockholder has failed to continue to satisfy the eligibility requirements described in *Section 15(c)*, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statement made not misleading), the Stockholder Nominee becomes unwilling or unable to serve on the Board of Directors or any violation or breach occurs of any of the obligations, agreements, representations or warranties of the Nominating Stockholder or the Stockholder Nominee under this *Section 15*.

(ii) Notwithstanding anything to the contrary contained in this *Section 15*, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Stockholder Nominee included in the Nomination Notice, if the Board of Directors or its designee in good faith determines that: (1) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (2) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any individual, corporation, partnership, association or other entity, organization or governmental authority; (3) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation or (4) the inclusion of such information in the proxy statement would impose a material risk of liability upon the Corporation.

The Company may solicit against, and include in the proxy statement its own statement relating to, any Stockholder Nominee.

ARTICLE IV **OFFICERS**

SECTION 1. *General.* The officers of this Corporation shall be chosen by the Board of Directors and shall be the Chief Executive Officer, a President, a Chief Financial Officer and a Secretary, and may include a Senior Operating Officer, any number of Executive Vice Presidents, one or more of whom may be designated Senior Executive Vice President, any number of Vice Presidents with such rank as the Board of Directors may designate, any number of Assistant Secretaries, a Treasurer, and any number of Assistant Treasurers. One of such Executive Vice Presidents or Vice Presidents shall be designated Chief Financial Officer and shall have responsibility, subject to the direction of the Board of Directors, the Chief Executive Officer and the President, for the management of the Corporation's financial affairs. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-laws. The officers of the Corporation need not be stockholders of the Corporation nor, need such officers be directors of the Corporation.

SECTION 2. *Election.* The Board of Directors at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in an office of the Corporation shall be filled by the Board of Directors.

SECTION 3. *Remuneration.* The Board of Directors shall have the power to fix and determine the salaries and other remuneration, and the terms and conditions thereof, of all executive officers of the Corporation.

SECTION 4. Section Intentionally Omitted.

SECTION 5. Section Intentionally Omitted.

SECTION 6. *Chief Executive Officer.* The Chief Executive Officer shall have general and active management of the business and affairs of the Corporation, shall have plenary power to issue orders and instructions to all officers and employees of the Corporation, and shall see that all orders and resolutions of the Board of Directors and the Executive Committee, if any, are carried into effect. Except where by law the signature of the Chairman of the Board or the President is required, the Chief Executive Officer shall possess the power to enter into and sign all contracts, certificates and other instruments of the Corporation, and shall have the power to delegate any portion of his authority under these By-laws to any other officer of the Corporation. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these By-laws or by the Board of Directors.

SECTION 7. *President.* The President shall perform such duties and have such powers as these By-laws, the Board of Directors or the Chief Executive Officer may from time to time prescribe.

SECTION 8. *Senior Operating Officer.* The Senior Operating Officer shall perform such duties and have such powers as are prescribed for Executive Vice Presidents and Vice Presidents under these By-laws and under any resolution of the Board of Directors and shall perform such additional duties and have such additional powers as these By-laws, the Board of Directors or the Chief Executive Officer may from time to time prescribe.

SECTION 9. *Executive Vice Presidents and Vice Presidents.* Each Executive Vice President or Vice President shall perform such duties and have such powers as these By-laws, the Board of Directors or the Chief Executive Officer from time to time may prescribe.

SECTION 10. *Secretary.* The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chairman of the Board of Directors, under whose supervision he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be any, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

SECTION 11. *Treasurer.* Subject to the direction of the Chief Financial Officer, the Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman of the Board and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

SECTION 12. *Assistant Secretaries.* Except as may be otherwise provided in these By-laws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, the President, any Vice President, if there be any, or the Secretary, and in the absence of the Secretary or in the event of his disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

SECTION 13. *Assistant Treasurers.* Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chairman of the Board of Directors, the President, any Vice President, if there be any, or the Treasurer, and in the absence of the Treasurer or in the event of his disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

SECTION 14. *Other Officers.* Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

SECTION 15. *Officers of Divisions.* The officers of divisions of the Corporation shall perform such duties and may exercise such powers as the Chief Executive Officer may from time to time prescribe.

ARTICLE V
STOCK

SECTION 1. *Uncertificated Shares.* Effective April 25, 2003, the shares of Common Stock of the Corporation shall be uncertificated.

Notwithstanding that the shares of Common Stock of the corporation shall be uncertificated, every holder of stock of any class or series in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the Chairman or Vice Chairman, if any, of the Board of Directors, or the President, an Executive Vice President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form.

SECTION 2. *Signatures.* Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature 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 by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

SECTION 3. *Lost, Stolen or Destroyed Certificates.* The Board of Directors may direct a new certificate to be issued in accordance with *Section 1* of this *Article V* in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum 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, stolen or destroyed.

SECTION 4. *Transfers.* Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-laws. Transfers of stock shall be made on the books of the Corporation (i) in the case of uncertificated shares, only by the person named in the stock register of the Corporation, by an attorney lawfully constituted in writing by such person or by any other representative of such person acceptable to the Corporation, and (ii) in the case of shares registered in certificate form, only by the person named in the certificate, by an attorney lawfully constituted in writing by such person or by any other representative of such person acceptable to the Corporation and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued in accordance with *Section 1* of this *Article V*.

SECTION 5. *Record Date.* 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, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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 by the Board of Directors, and which record date shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. 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.

SECTION 6. *Beneficial Owners.* 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 to hold liable for calls and assessments a person registered on its books as the owner of shares, 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 law.

ARTICLE VI NOTICES

SECTION 1. *Notices.* Whenever written notice is required by law, the Certificate of Incorporation or these By-laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable or by facsimile or other electronic transmission. Notice given by any such means shall be deemed to have been given at the time delivered, sent or transmitted.

SECTION 2. *Waivers of Notice.* Whenever any notice is required by law, the Certificate of Incorporation or these By-laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VII
GENERAL PROVISIONS

SECTION 1. *Dividends.* Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

SECTION 2. *Disbursements.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

SECTION 3. *Fiscal Year.* The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

SECTION 4. *Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

SECTION 5. *Stock Held by Corporation.* Powers of attorney, proxies, waivers of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name and on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or such other officer or officers as the Board of Directors or the Chairman of the Board may designate, and any such officer shall have full power and authority on behalf of the Corporation, in person or by proxy, to attend, and to act and vote at, any meeting of stockholders of any corporation in which the Corporation may hold securities, and at any such meeting shall possess, and may exercise, any and all of the rights and powers incident to the ownership of such securities.

SECTION 6. *Forum for Adjudication of Disputes.* Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (the "Court of Chancery") (or, if and only if the Court of Chancery lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action or proceeding asserting a claim arising pursuant to, or seeking to enforce any right, obligation or remedy under, any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these By-laws (as each may be amended from time to time), (iv) any action or proceeding as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery, or (v) any action or proceeding asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring or holding or owning (or continuing to hold or own) any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this By-law.

ARTICLE VIII
INDEMNIFICATION

SECTION 1. Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to *Section 3* of this *Article VIII*, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he 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, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

SECTION 2. *Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation.* Subject to *Section 3* of this *Article VIII*, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he 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, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

SECTION 3. *Authorization of Indemnification.* Any indemnification under this *Article VIII* (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in *Section 1* or *Section 2* of this *Article VIII*, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in *Section 1* or *Section 2* of this *Article VIII*, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

SECTION 4. *Good Faith Defined.* For purposes of any determination under *Section 3* of this *Article VIII*, a person shall be deemed to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his conduct was unlawful, if his action is based on the records or books of account of the Corporation or another enterprise, or on information, opinions, reports or statements supplied to him by the officers or employees of the Corporation or another enterprise in the course of their duties, or by a committee of the Board of Directors of the Corporation, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports or statements made to the Corporation or another enterprise by an independent certified public accountant, by an appraiser or by another person selected with reasonable care by or on behalf of the Corporation or another enterprise as to matters such person reasonably believes are within such certified public accountant's, appraiser's, or other person's professional or expert competence. The term "another enterprise" as used in this *Section 4* shall mean any other corporation or any partnership, joint venture, trust or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this *Section 4* shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in *Sections 1* or *2* of this *Article VIII*, as the case may be.

SECTION 5. *Indemnification by a Court.* Notwithstanding any contrary determination in the specific case under *Section 3* of this *Article VIII*, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under *Sections 1* and *2* of this *Article VIII*. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in *Sections 1* or *2* of this *Article VIII*, as the case may be. Notice of any application for indemnification pursuant to this *Section 5* shall be given to the Corporation promptly upon the filing of such application.

SECTION 6. *Expenses Payable in Advance.* Expenses incurred in defending or investigating a threatened or pending action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this *Article VIII*.

SECTION 7. *Non-exclusivity and Survival of Indemnification.* The indemnification and advancement of expenses provided by this *Article VIII* shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in *Sections 1* and *2* of this *Article VIII* shall be made to the fullest extent permitted by law. The provisions of this *Article VIII* shall not be deemed to preclude the indemnification of any person who is not specified in *Sections 1* or *2* of this *Article VIII* but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise. The indemnification and advancement of expenses provided by this *Article VIII* shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

SECTION 8. *Insurance.* The Corporation may purchase and maintain insurance on behalf of any person who 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, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this *Article VIII*.

SECTION 9. *Meaning of "Corporation" for Purposes of Article VIII.* For purposes of this *Article VIII*, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this *Article VIII* with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

DIRECTOR APPOINTMENT AND NOMINATION AGREEMENT

This Director Appointment and Nomination Agreement, dated as of March 25, 2020 (this “**Agreement**”), is by and among the persons and entities listed on Schedule A (collectively, the “**Icahn Group**”, and each individually a “**member**” of the Icahn Group), Occidental Petroleum Corporation (the “**Company**”) and, solely with respect to the provisions applicable to the New Independent Director, Margarita Paláu-Hernández (the “**New Independent Director**”). In consideration of and reliance upon the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Board Representation and Board Matters; Corporate Governance.

(a) The Company and the Icahn Group agree as follows:

- (i) on or prior to the date of this Agreement, the Company shall take or shall have taken all necessary action to increase the size of the Board of Directors of the Company (the “**Board**”) to fifteen (15) and to appoint the following persons to fill the resulting vacancies, effective immediately, each with a term expiring at the 2020 annual meeting of stockholders of the Company (the “**2020 Annual Meeting**”): (x) Stephen Chazen, as the new Chairman of the Board (the “**New Chairman**”), (y) the New Independent Director and (z) each of Andrew Langham and Nicholas Graziano as directors of the Board (Messrs. Langham and Graziano, collectively, the “**Icahn Designees**” and each an “**Icahn Designee**”).
 - (ii) as long as the Icahn Group has not materially breached this Agreement and failed to cure such breach within five (5) business days of written notice from the Company specifying any such breach, the Company agrees that the Company’s slate of nominees for election to the Board at the 2020 Annual Meeting will consist of no more than eleven (11) individuals (collectively, the “**2020 OXY Slate**”) and will include the New Chairman, New Independent Director and each of the Icahn Designees as well as the following persons: Andrew F. Gould, Carlos M. Gutierrez, Vicki A. Hollub, William R. Klesse, Jack B. Moore, Avedick B. Poladian and Robert M. Shearer. Notwithstanding the foregoing, should any of the nominees on the 2020 Oxy Slate, other than the New Independent Director or any Icahn Designee, resign from the Board or be rendered unable or refuse to stand for election to, or for any other reason fail to serve or is not serving on, the Board, the Company shall be entitled to nominate a replacement for election to the Board at the 2020 Annual Meeting.
 - (iii) the Company shall use reasonable best efforts to cause the election of the New Chairman, New Independent Director and each of the Icahn Designees at the 2020 Annual Meeting (including by (x) recommending that the Company’s stockholders vote in favor of the election of the New Chairman, New Independent Director and each of the Icahn Designees, (y) including the New Chairman, New Independent Director and each of the Icahn Designees in the Company’s proxy statement and proxy card for the 2020 Annual Meeting, and (z) otherwise supporting the New Chairman, New Independent Director and each of the Icahn Designees for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees in the aggregate).
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- (iv) that as a condition to the Icahn Designees' and the New Independent Director's appointment to the Board, the Icahn Designees and the New Independent Director each agree to provide to the Company, prior to nomination and appointment and on an on-going basis while serving as a member of the Board, such information and materials as the Company routinely receives from other members of the Board or as is required to be disclosed in proxy statements under applicable law or as is otherwise reasonably requested by the Company from time-to-time from all members of the Board in connection with the Company's legal, regulatory, auditor or stock exchange requirements, including a completed D&O Questionnaire in the form separately provided to the Icahn Group (the "**Nomination Documents**").
- (v) that should any Icahn Designee or New Independent Director resign from the Board (other than, in the case of an Icahn Designee, as required by **Section 1(d)**) or be rendered unable to, or refuse to, be appointed to, or for any other reason fail to serve or is not serving, on the Board (other than as a result of not being nominated by the Company for election at an annual meeting of stockholders subsequent to the 2020 Annual Meeting, following which the Icahn Group's replacement rights pursuant to this **Section 1(a)(v)** shall terminate with respect to such Icahn Designee or the New Independent Director, as the case may be), as long as the Icahn Group has not materially breached this Agreement and failed to cure such breach within five (5) business days of written notice from the Company specifying any such breach, the Icahn Group shall be entitled to designate, and the Company shall cause to be added as a member of the Board or as a nominee on the 2020 OXY Slate, as applicable, a replacement that is approved by the Board, such approval not to be unreasonably withheld, conditioned or delayed (an "**Acceptable Person**") (and if such proposed designee is not an Acceptable Person, the Icahn Group shall be entitled to continue designating a recommended replacement until such proposed designee is an Acceptable Person) (a "**Replacement**"). Notwithstanding the foregoing sentence, the Icahn Group's replacement rights pursuant to this **Section 1(a)(v)** shall terminate with respect to the New Independent Director at such time as all Icahn Designees (or their Replacements) are required to tender their resignations from the Board pursuant to **Section 1(d)**. Any such Replacement who becomes a Board member in replacement of any Icahn Designee or New Independent Director shall be deemed to be an Icahn Designee or New Independent Director, as applicable, for all purposes under this Agreement and, as a condition to being appointed to the Board, shall be required to sign a customary joinder to this Agreement. For the avoidance of doubt, in no event will the Board be required to approve as a Replacement for the New Independent Director any individual with a material relationship (as such term is used in the NYSE Rules (as defined below)) with the Icahn Group or any Icahn Affiliate (as defined below), including by employment (including as a board member) by any member of the Icahn Group or any Icahn Affiliate or by being designated by the Icahn Group or any Icahn Affiliate to serve on the board of directors (including as an observer) of another person.

- (vi) from and after the date of this Agreement, until such time as one or more of the Icahn Designees (or their Replacements) are required to tender their resignations from the Board pursuant to **Section 1(d)**, without the approval of the Icahn Designees who are then members of the Board, the Board shall not elect or appoint a new Chairman of the Board without the approval (not to be unreasonably withheld, delayed or conditioned) of such Icahn Designees; provided, however, that in no event shall the Icahn Designees condition any approval under this **Section 1(a)(vi)** on any of the following individuals being named as the new Chairman: (x) any Icahn Designee, (y) the New Independent Director or (z) any employee or director of, or any other individual that has a material relationship (as such term is used in the NYSE Rules) with, the Icahn Group or any Icahn Affiliate.
- (vii) that (1) for any annual meeting of stockholders subsequent to the 2020 Annual Meeting, the Company shall notify the Icahn Group in writing no less than thirty-five (35) calendar days before the advance notice deadline set forth in the Company's By-laws (as amended, the "**By-laws**") whether the Icahn Designees and the New Independent Director will be nominated by the Company for election as directors at such annual meeting and, (2) if the Icahn Designees and the New Independent Director, as applicable, are to be so nominated, shall use reasonable best efforts to cause the election of the Icahn Designees and the New Independent Director, as applicable, so nominated by the Company (including by (x) recommending that the Company's stockholders vote in favor of the election of the Icahn Designees and the New Independent Director, as applicable, (y) including the Icahn Designees and the New Independent Director, as applicable, in the Company's proxy statement and proxy card for such annual meeting and (z) otherwise supporting the Icahn Designees and the New Independent Director, as applicable, for election in a manner no less rigorous and favorable than the manner in which the Company supports its other nominees in the aggregate).
- (viii) that as of the date of this Agreement, the Company represents and warrants that, (y) prior to the Board appointing the Icahn Designees and the New Independent Director as directors, the Board is composed of twelve (12) directors and that there are no vacancies on the Board, and (z) after the Board appoints the Icahn Designees and the New Independent Director as directors, the Board will be composed of fifteen (15) directors and that there will be no vacancies on the Board. Notwithstanding anything to the contrary herein, from and after the date of this Agreement, so long as an Icahn Designee is a member of the Board, without the approval of the Icahn Designees who are then members of the Board, the Board shall not increase the size of the Board above (1) prior to opening of the polls at the 2020 Annual Meeting, fifteen (15) directors and (2) from and after the opening of the polls at the 2020 Annual Meeting, eleven (11) directors, in each case with each such director having one vote on all matters.
- (ix) that from and after the date of this Agreement, so long as an Icahn Designee is a member of the Board (and in each case other than with respect to the Oversight Committee (as defined below)): (x) without the approval of the Icahn Designees then on the Board, the Board shall not form an Executive Committee or any other committee with functions similar to those customarily granted to an Executive Committee; and (y) the Board shall not form any other new committee without offering to at least one Icahn Designee the opportunity to be a member of such committee (provided, however that if such committee has more than four (4) members then two Icahn Designees shall be offered to be appointed to such committee (to the extent there are two Icahn Designees then on the Board)). Notwithstanding anything to the contrary in this Agreement, any Board consideration of appointment and employment of executive officers, mergers, acquisitions of material assets, dispositions of material assets, or other extraordinary transactions, such consideration, and voting with respect thereto, shall take place only at the full Board level or in committees of which one of the Icahn Designees is a member.

- (x) each of the Icahn Designees and the New Independent Director confirms that he or she will recuse himself or herself from such portions of Board or committee meetings, if any, involving actual conflicts between the Company and the Icahn Group. Promptly following the execution of this Agreement, and in any event within one (1) business day following the date hereof, the Board shall make a determination as to whether the Icahn Designees and the New Independent Director, based solely upon the representations provided by the Icahn Group in Section 6 of this Agreement and the information provided to the Board by the Icahn Designees and the New Independent Director in the Nomination Documents, are independent under the Board's independence guidelines, the independence requirements of the New York Stock Exchange (the "**NYSE Rules**"), and the independence standards applicable to the Company under paragraph (a)(1) of Item 407 of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").
- (xi) that, to the extent permitted by law and the Company's existing insurance coverage, from and after the date of this Agreement, the Icahn Designees and the New Independent Director shall be covered by the same indemnification and insurance provisions and coverage as are applicable to the individuals that are currently directors of the Company.
- (xii) concurrently with their appointments to the Board pursuant to **Section 1(a)(i)** and subject to compliance with all stock exchange rules, the Board will appoint: (1) Nicholas Graziano and Andrew Langham to the Oversight Committee; (2) Nicholas Graziano to the Audit Committee of the Board; (3) the New Independent Director to the Executive Compensation Committee of the Board, (4) Andrew Langham to the Corporate Governance and Nominating Committee of the Board; and (5) the New Independent Director to the Environmental, Health and Safety Committee of the Board. Notwithstanding the foregoing, the Company acknowledges that any director is permitted to attend any committee meeting regardless of whether such director is a member of such committee. For purposes of this Agreement, the "**Oversight Committee**" shall mean a committee of the Board the purpose of which shall consist of providing regular Board input and oversight, shall meet more frequently with management than the full Board and which shall initially be comprised of the New Chairman, Nicholas Graziano, Andrew Langham, Jack Moore and Andrew Gould. The Oversight Committee shall be formed as promptly as practicable following the date of this Agreement.

- (b) At all times from the date of this Agreement through the termination of their service as a member of the Board, each of the Icahn Designees and the New Independent Director shall comply with all written policies, procedures, processes, codes, rules, standards and guidelines applicable to all non-employee Board members and of which the Icahn Designees and the New Independent Directors have been provided written copies in advance (or which have been filed with the Securities and Exchange Commission (“SEC”) or posted on the Company’s website), including the Company’s code of business conduct, corporate policies on ethical business conduct, political contributions, lobbying and other political activities policy, conflicts of interest policy, insider trading policy, anti-hedging policy and governance policies, and shall preserve the confidentiality of Company business and information, including discussions or matters considered in meetings of the Board or Board committees (except to the extent permitted in the Confidentiality Agreement (as defined below) to be entered into pursuant to Section 4 of this Agreement). In addition, each of the Icahn Designees and the New Independent Director is aware of and shall act in accordance with his or her fiduciary duties with respect to the Company and its stockholders; provided, however, that any alleged or actual breach of their fiduciary duties shall not restrict or eliminate any rights such director has to insurance coverage or indemnification from the Company.
- (c) the Icahn Group hereby withdraws (x) its nominations of each of the Icahn Designees and each of the other nominees named by the Icahn Group for election at the 2020 Annual Meeting in the nomination notice submitted to the Company (as amended) and any related materials or notices submitted to the Company in connection therewith or related thereto; provided that the Icahn Designees are included as nominees on the 2020 OXY Slate as provided herein and (y) all of its proposals (the “**Icahn Group Proposals**”) for other business to be brought before the stockholders at the 2020 Annual Meeting and any related materials or notices submitted to the Company in connection therewith or related thereto.
- (d) Any provision in this Agreement to the contrary notwithstanding, if at any time after the date of this Agreement, the Icahn Group, together with any controlled Affiliate of the members of the Icahn Group (such controlled Affiliates, collectively and individually, the “**Icahn Affiliates**”), ceases collectively to beneficially own (for all purposes in this Agreement, the terms “beneficially own” and “beneficial ownership” shall have the meaning ascribed to such terms as defined in Rule 13d-3 (as in effect from time to time) promulgated by the SEC under the Exchange Act), an aggregate Net Long Position (x) in at least 44,313,635 of the total outstanding shares of common stock, par value \$0.20 per share, of the Company (“**Common Shares**”) (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar type events), (1) one of the Icahn Designees (or, if applicable, his or her Replacement) shall, and the Icahn Group shall cause such Icahn Designee to, promptly tender his or her resignation from the Board and any committee of the Board on which he or she then sits and (2) the Icahn Group shall not have the right to replace such Icahn Designee; or (y) in at least 22,156,817 of the total outstanding Common Shares (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar type events), (1) each of the Icahn Designees (or, if applicable, his or her Replacement) shall, and the Icahn Group shall cause such Icahn Designee to, promptly tender his or her resignation from the Board and any committee of the Board on which he or she then sits and (2) the Icahn Group shall not have the right to replace such Icahn Designee(s).

The Icahn Group, upon request, shall keep the Company regularly apprised of the Net Long Position of the Icahn Group and the Icahn Affiliates to the extent that such position differs from the ownership positions publicly reported on the Icahn Group’s Schedule 13D and amendments thereto.

For purposes of this Agreement: the term “**Net Long Position**” shall mean: such Common Shares beneficially owned, directly or indirectly, that constitute such person’s net long position as defined in Rule 14e-4 under the Exchange Act mutatis mutandis, provided that “Net Long Position” shall not include any shares as to which such person does not have the right to vote or direct the vote, or as to which such person has entered into a derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares; and the terms “**person**” or “**persons**” shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability or unlimited liability company, joint venture, estate, trust, association, organization or other entity of any kind or nature.

- (e) Each of the Icahn Designees shall, prior to his or her appointment to the Board, and each member of the Icahn Group shall cause each of the Icahn Designees to, execute an irrevocable resignation in the form attached to this Agreement as **Exhibit A**.
- (f) Other than the Rights Agreement, dated as of March 12, 2020 (the “**Rights Agreement**”) between the Company and Equiniti Trust Company, as Rights Agent, so long as the Icahn Group, together with the Icahn Affiliates, beneficially owns an aggregate Net Long Position in at least 44,313,635 of the total outstanding Common Shares (as adjusted for any stock dividends, combinations, splits, recapitalizations or similar type events), the Company shall not adopt a Rights Plan (x) with an “Acquiring Person” beneficial ownership threshold below 20.0% of the then-outstanding Common Shares and (y) unless such Rights Plan provides that, if such Rights Plan is not ratified by the Company’s stockholders within one (1) year of such Rights Plan being adopted, such Rights Plan shall automatically expire. The term “**Rights Plan**” shall mean any plan or arrangement of the sort commonly referred to as a “rights plan” or “stockholder rights plan” or “shareholder rights plan” or “poison pill” that is designed to increase the cost to a potential acquirer of exceeding the applicable ownership thresholds through the issuance of new rights, common stock or preferred shares (or any other security or device that may be issued to stockholders of the Company, other than ratably to all stockholders of the Company) that carry severe redemption provisions, favorable purchase provisions or otherwise, and any related rights agreement.
- (g) On or prior to the date of this Agreement, the Company shall adopt or shall have adopted amendments to the By-laws substantially in the final form provided to the Icahn Group concurrently with the execution of this Agreement. The Company agrees to and shall submit to its stockholders at the 2020 Annual Meeting proposals substantially in the final form provided to the Icahn Group concurrently with the execution of this Agreement (and any changes thereto after the date of this Agreement shall be subject to the approval of the Icahn Group, not to be unreasonably withheld, delayed or conditioned) (the “**Corporate Governance Proposals**”) to amend the Company’s Restated Certificate of Incorporation. The Company shall use reasonable best efforts to cause the Corporate Governance Proposals to be adopted by the Company’s stockholders at the 2020 Annual Meeting (including by recommending that the Company’s stockholders vote in favor of the Corporate Governance Proposals) and otherwise supporting the adoption of the Corporate Governance Proposals by the stockholders in a manner no less rigorous and favorable than the manner in which the Company seeks support for the other proposals recommended by the Board for stockholder approval at the 2020 Annual Meeting.

2. Voting Agreement; Icahn Group Restrictions.

- (a) Unless the Company or the Board has: (x) breached **Sections 1(a)(i), (ii), (vii)(1) or (viii)**, (y) breached **Sections 1(a)(iii), (v), (vi), (vii)(2), (ix), (x), (xi), (xii), (f) or (g)** and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach; or (z) otherwise breached any other material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach, solely in connection with the 2020 Annual Meeting, each member of the Icahn Group shall (1) cause, in the case of all Voting Securities owned of record, and (2) instruct and cause the record owner, in the case of all shares of Voting Securities beneficially owned but not owned of record, directly or indirectly, by it, or by any Icahn Affiliate, in each case as of the record date of the 2020 Annual Meeting, in each case that are entitled to vote at the 2020 Annual Meeting, to be present for quorum purposes and to be voted, at the 2020 Annual Meeting or at any adjournment or postponement thereof, (A) for each nominee on the 2020 OXY Slate, (B) against any proposed directors that are not nominated by the Board for election at the 2020 Annual Meeting and (C) in favor of the ratification of the Company's auditors, (D) in favor of the proposal to increase the number of the Company's authorized Common Shares to 1.5 billion and (E) in favor of adopting the Corporate Governance Proposals. Except as provided in the foregoing sentence, the Icahn Group shall not be restricted from voting "For", "Against" or "Abstaining" from any other proposals at any annual or special meeting.
- (b) Unless the Company or the Board has: (x) breached **Sections 1(a)(i), (ii), (vii)(1) or (viii)**, (y) breached **Sections 1(a)(iii), (v), (vi), (vii)(2), (ix), (x), (xi), (xii), (f) or (g)** and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach; or (z) otherwise breached any other material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach, that for any annual meeting of stockholders subsequent to the 2020 Annual Meeting, if the Board has agreed to nominate the Icahn Designees then serving on the Board for election at such annual or special meeting and the Icahn Designees and the New Independent Director have consented to be nominated at such annual meeting, each member of the Icahn Group shall (1) cause, in the case of all Voting Securities owned of record, and (2) instruct and cause the record owner, in the case of all shares of Voting Securities beneficially owned but not owned of record, directly or indirectly, by it, or by any Icahn Affiliate, in each case as of the record date of the applicable annual meeting, in each case that are entitled to vote at such annual meeting, to be present for quorum purposes and to be voted at such annual meeting or at any adjournment or postponement thereof, (A) for each director nominated by the Board for election at such annual meeting, (B) against any (i) stockholder proposal to increase the size of the Board and (ii) any proposed directors that are not nominated by the Board for election at such annual meeting, and (C) in favor of the appointment of the Company's auditors. Except as provided in the foregoing sentence and in **Section 2(c)**, the Icahn Group shall not be restricted from voting "For", "Against" or "Abstaining" from any other proposals at any annual or special meeting following the 2020 Annual Meeting.

(c) Unless the Company or the Board has: (x) breached **Sections 1(a)(i), (ii), (vii)(1) or (viii)**, (y) breached **Sections 1(a)(iii), (v), (vi), (vii)(2), (ix), (x), (xi), (xii), (f) or (g)** and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach; or (z) otherwise breached any other material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach, that for any special meeting of stockholders that includes a proposal to remove and replace directors or to expand the Board and add directors, then so long as (x) any Icahn Designee is a member of the Board at the time of such special meeting or (y) the Icahn Group has the right to designate a Replacement at such time (including at such special meeting), each member of the Icahn Group shall (1) cause, in the case of all Voting Securities owned of record, and (2) instruct and cause the record owner, in the case of all shares of Voting Securities beneficially owned but not owned of record, directly or indirectly, by it, or by any Icahn Affiliate, in each case as of the record date of such special meeting, in each case that are entitled to vote at such special meeting, to be present for quorum purposes and to be voted at such special meeting or at any adjournment or postponement thereof, (A) for each director nominated or supported by the Board for election at such special meeting, and (B) against any (i) proposal to remove directors or increase the size of the Board and (ii) proposed directors that are not nominated by the Board for election at such special meeting. Except as provided in the foregoing sentence, the Icahn Group shall not be restricted from voting “For”, “Against” or “Abstaining” from any other proposals at any such special meeting.

As used in this Agreement, the term “**Voting Securities**” shall mean the Common Shares that such person has the right to vote or has the right to direct the vote. For purposes of this Section, no person shall be, or be deemed to be, the “beneficial owner” of, or to “beneficially own,” any securities beneficially owned by any director of the Company to the extent such securities were acquired directly from the Company by such director as or pursuant to director compensation for serving as a director of the Company. For purposes of this Agreement, the term “**Affiliate**” shall have the meaning set forth in Rule 12b-2 promulgated by the SEC under the Exchange Act.

(d) From and after the date hereof, until the later of (x) the end of the 2020 Annual Meeting and (y) such date as no Icahn Designee is on the Board and the Icahn Group no longer has any right to designate a Replacement (including if the Icahn Group has irrevocably waived such right in writing) (the “**Standstill Period**”), so long as the Company has not breached any material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach, no member of the Icahn Group shall, directly or indirectly, and each member of the Icahn Group shall cause each of the Icahn Affiliates not to, directly or indirectly (it being understood that the foregoing shall not restrict the Icahn Designees from discussing the matters set forth below with other members of the Board):

(i) except with respect to the signatories to the Icahn Group’s Schedule 13D filed with the SEC on March 12, 2020 (the “**Icahn Schedule 13D**”), form or join in a partnership, limited partnership, syndicate or a “group” as defined under Section 13(d) of the Exchange Act, with respect to the securities of the Company;

(ii) present (or request to present) at any annual meeting or any special meeting of the Company’s stockholders, any proposal for consideration for action by stockholders or engage in any solicitation of proxies or consents or become a “participant” in a “solicitation” (as such terms are defined in Regulation 14A under the Exchange Act) of proxies or consents (including, without limitation, any solicitation of consents that seeks to call a special meeting of stockholders) or, except as provided in this Agreement, otherwise publicly propose (or publicly request to propose) any nominee for election to the Board or seek representation on the Board or the removal of any member of the Board; provided, however, that nothing in this clause (ii) or any other provision in this Agreement shall restrict or prevent any member of the Icahn Group from (A) supporting or engaging in solicitation activities relating to the 2020 Annual Meeting or any future annual or special meeting, to the extent such support or solicitation activities are consistent with the Company’s recommendations disclosed in the Company’s proxy statement prepared in connection with such annual or special meeting or (B) engaging in solicitation activities to encourage any stockholder to vote “Against” the proposal to approve the Rights Agreement (the foregoing (A) and (B), collectively, “**Permitted Solicitation Activities**”);

- (iii) grant any proxy, consent or other authority to vote with respect to any matters (other than to the named proxies included in the Company's proxy card for any annual meeting or special meeting of stockholders) or deposit any Voting Securities in a voting trust or subject them to a voting agreement or other arrangement of similar effect (excluding customary brokerage accounts, margin accounts, prime brokerage accounts and the like), in each case, except as provided in **Sections 2(a), (b) or (c)**;
- (iv) call or seek to call any special meeting of the Company or make any request under Section 220 of the Delaware General Corporation Law ("**DGCL**") or other applicable legal provisions regarding inspection of books and records or other materials (including stocklist materials) of the Company or any of its subsidiaries;
- (v) institute, solicit, assist or join, as a party, any litigation, arbitration or other proceeding against or involving the Company;
- (vi) separately or in conjunction with any other person in which it is or proposes to be either a principal, partner or financing source or is acting or proposes to act as broker or agent for compensation, submit a proposal for or offer of (with or without conditions), any Extraordinary Transaction (as defined below); provided that the Icahn Group shall be permitted to sell or tender their Common Shares, and otherwise receive consideration, pursuant to any Extraordinary Transaction; and provided further that (A) if a third party (other than the Icahn Group or an Icahn Affiliate) commences a tender offer or exchange offer for all of the outstanding Common Shares that is recommended by the Board in its Recommendation Statement on Schedule 14D-9, then the Icahn Group shall similarly be permitted to make an offer for the Company or commence a tender offer or exchange offer for all of the outstanding Common Shares at the same or higher consideration per share, provided that the foregoing (y) will not relieve the Icahn Group of its obligations under the Confidentiality Agreement and (z) will not be deemed to require the Company to make any public disclosures and (B) the Company may waive the restrictions in this **Section 2(d)(vi)** with the approval of the Board. "**Extraordinary Transaction**" means, collectively, any of the following involving the Company or any of its subsidiaries or its or their securities or all or substantially all of the assets or businesses of the Company and its subsidiaries: any tender offer or exchange offer, merger, acquisition, business combination, reorganization, restructuring, recapitalization, sale or acquisition of material assets, or liquidation or dissolution; provided, however, this clause (vi) shall not prevent an Icahn Designee acting in his or her capacity as a director of the Company from raising such matter at the Board;

- (vii) seek, or encourage any person, to submit nominations in furtherance of a “contested solicitation” for the election or removal of directors with respect to the Company or, except as expressly provided in this Agreement, seek, encourage or take any other action with respect to the election or removal of any directors;
 - (viii) make any public communication in opposition to (A) any merger, acquisition, amalgamation, recapitalization, restructuring, disposition, distribution, spin-off, asset sale, joint venture or other business combination or (B) any financing transaction, in each case involving the Company and approved by one or more Icahn Designees then on the Board;
 - (ix) seek to advise, encourage, support or influence any person with respect to the voting or disposition of any securities of the Company at any annual or special meeting of stockholders, except in accordance with **Section 2(a), (b) or (c)** and the Permitted Solicitation Activities; or
 - (x) publicly disclose any intention, plan or arrangement inconsistent with any provision of this **Section 2(d)**.
- (e) During the Standstill Period, (i) so long as the Company has not breached any material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Icahn Group specifying any such breach, neither a member of the Icahn Group nor any of the Icahn Affiliates shall make, or cause to be made, by press release or similar public statement, including to the press or media (including social media), or in an SEC filing, any statement or announcement that disparages (as distinct from objective statements reflecting business criticism) the Company or the Company’s respective current or former officers or directors and (ii) so long as the Icahn Group has not breached any material provision of this Agreement and failed to cure such breach within five (5) business days following the receipt of written notice from the Company specifying any such breach, neither the Company nor any of its Affiliates shall make, or cause to be made, by press release or similar public statement, including to the press or media (including social media), or in an SEC filing, any statement or announcement that disparages (as distinct from objective statements reflecting business criticism) any member of the Icahn Group or Icahn Affiliates or any of their respective current or former officers or directors.

3. **Public Announcements.** Unless otherwise agreed, no earlier than 6:30 a.m., New York City time, on the first trading day after the date of this Agreement, the Company shall announce the execution of this Agreement by means of a press release in the form attached to this Agreement as **Exhibit B** (the “**Press Release**”). The Company acknowledges that the Icahn Group intends to file this Agreement and the Press Release (if any) as an exhibit to the Icahn Schedule 13D pursuant to an amendment. The Company shall have an opportunity to review in advance any Schedule 13D filing made by the Icahn Group with respect to this Agreement, and the Icahn Group shall have an opportunity to review in advance the Form 8-K filing to be made by the Company with respect to this Agreement.

4. **Confidentiality Agreement.** The Company hereby agrees that: (i) the Icahn Designees are permitted to and may provide confidential information subject to and in accordance with the terms of the confidentiality agreement in the form attached to this Agreement as **Exhibit C** (the “**Confidentiality Agreement**”) (which the Icahn Group agrees to execute and deliver to the Company and cause the Icahn Designees to abide by) and (ii) the Company will execute and deliver the Confidentiality Agreement to the Icahn Group substantially contemporaneously with execution and delivery thereof by the other signatories thereto. At any time an Icahn Designee is a member of the Board, the Board shall not adopt a policy precluding members of the Board from speaking to Mr. Icahn, and the Company confirms that it will advise members of the Board that they may speak to Mr. Icahn (but subject to the Confidentiality Agreement), if they are willing to do so (but may caution them regarding specific matters, if any, that involve conflicts between the Company and the Icahn Group).

5. **Representations and Warranties of All Parties.** Each of the parties represents and warrants to the other party that: (a) such party has all requisite company power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (b) this Agreement has been duly and validly authorized, executed and delivered by it and is a valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (c) this Agreement will not result in a violation of any terms or conditions of any agreements to which such person is a party or by which such party may otherwise be bound or of any law, rule, license, regulation, judgment, order or decree governing or affecting such party.
6. **Pending Section 220 Demand and Related Litigation.** The Icahn Group hereby agrees, no later than March 26, 2020, (i) to withdraw and not renew its demand for books and records and other materials pursuant to Section 220 of the DGCL and (ii) pursuant to Rule 29(a) of the Rules of the Supreme Court of the State of Delaware, to (1) stipulate to the dismissal with prejudice of the appeal filed by High River Limited Partnership, Icahn Partners Master Fund LP and Icahn Partners LP on November 18, 2019 in the Supreme Court of the State of Delaware in the case captioned *High River Ltd. P'ship v. Occidental Petroleum Corp.*, C.A. No. 483, 2019, and (2) use reasonable best efforts to obtain Court approval of such stipulation of dismissal, including by preparing and executing such other documentation necessary or appropriate, by order of such Court or otherwise, to obtain such approval.
7. **Representations and Warranties of Icahn Group.** Each member of the Icahn Group jointly represents and warrants that, as of the date of this Agreement, (a) the Icahn Group collectively beneficially own, an aggregate of 88,627,271 Common Shares, (b) except as set forth in the preceding clause (a), no member of the Icahn Group, individually or in the aggregate with any Icahn Affiliate, has any other beneficial ownership of, or economic exposure to, any Common Shares, including through any derivative transaction or agreement; (c) the New Independent Director is not employed by any member of the Icahn Group (but the New Independent Director does serve as a director of Herbalife Ltd. and Conduent, Inc., both public companies in which the Icahn Group has a significant position); and (d) no member of the Icahn Group has any knowledge of any other stockholder of the Company that intends to submit a notice to the Company to nominate directors at the 2020 Annual Meeting.
8. **Representations and Warranties and Covenants of the Company.** The Company represents and warrants, that as of the date of this Agreement, (a) none of the Company, the Board nor their respective advisors are engaged in discussions to grant board representation or board designation rights to any other stockholder of the Company, except for the Icahn Group, (b) the total annual compensation for the New Chairman is substantially similar to or lower than the total annual compensation paid to the existing Chairman as disclosed in the Company's 2019 definitive proxy statement, filed with the SEC on March 28, 2019, and (c) the date for the 2020 Annual Meeting is scheduled for May 29, 2020 (and shall, in any event, be held no later than June 15, 2020). Further, the Company agrees that if the Company enters into an agreement, arrangement or understanding, or otherwise grants any rights, to any other stockholder of the Company to avoid a proxy or similar contest with such stockholder at the 2020 Annual Meeting, then to the extent such agreement, arrangement or understanding grants any right or rights that are more favorable than those set forth in this Agreement, the Company agrees it shall offer the same such rights to the Icahn Group.

9. **Miscellaneous.** Following the appointment of the Icahn Designees to the Board pursuant to **Section 1(a)(i)**, this Agreement shall thereafter terminate and be of no further force or effect at such time, if any, as (a) no Icahn Designee serves on the Board and (b) the Icahn Group is no longer entitled to designate a Replacement for any Icahn Designee. The parties hereto recognize and agree that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, each party agrees that in addition to other remedies the other party shall be entitled to at law or equity, the other party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Court of Chancery or other federal or state courts of the State of Delaware. In the event that any action shall be brought in equity to enforce the provisions of this Agreement, no party shall allege, and each party hereby waives the defense, that there is an adequate remedy at law. Furthermore, each of the parties hereto (i) consents to submit itself to the personal jurisdiction of the Court of Chancery or other federal or state courts of the State of Delaware in the event any dispute arises out of this Agreement or the transactions contemplated by this Agreement, (ii) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (iii) agrees that it shall not bring any action relating to this Agreement or the transactions contemplated by this Agreement in any court other than the Court of Chancery or other federal or state courts of the State of Delaware, and each of the parties irrevocably waives the right to trial by jury, (iv) agrees to waive any bonding requirement under any applicable law, in the case any other party seeks to enforce the terms by way of equitable relief, and (v) irrevocably consents to service of process by a reputable overnight mail delivery service, signature requested, to the address of such party's principal place of business or as otherwise provided by applicable law. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES OF SUCH STATE.
10. **No Waiver.** Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
11. **Entire Agreement.** This Agreement and the Confidentiality Agreement contain the entire understanding of the parties with respect to the subject matter hereof and may be amended only by an agreement in writing executed by the parties hereto.
12. **Notices.** All notices, consents, requests, instructions, approvals and other communications provided for herein and all legal process in regard hereto shall be in writing and shall be deemed validly given, made or served, if (a) given by telecopy and email, when such telecopy and email is transmitted to the telecopy number set forth below and sent to the email address set forth below and the appropriate confirmation is received or (b) if given by any other means, when actually received during normal business hours at the address specified in this subsection:

if to the Company:

Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046
Email: Marcia_E._Backus@oxy.com
Attention: Marcia E. Backus, General Counsel

With copies to (which shall not constitute notice):

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Email: gschoen@cravath.com
khallam@cravath.com
awein@cravath.com

Attention:
George F. Schoen
O. Keith Hallam, III
Allison M. Wein

if to the Icahn Group:

Icahn Associates Corp.
16690 Collins Avenue, Penthouse Suite
Sunny Isles Beach, FL 33160
Attention: Keith Cozza, President and CEO
Email: kcozza@sfire.com

With a copy to (which shall not constitute notice):

Icahn Associates Corp.
16690 Collins Avenue, Penthouse Suite
Sunny Isles Beach, FL 33160
Attention: Jesse Lynn, General Counsel
Email: jlynn@sfire.com

13. **Severability.** If at any time subsequent to the date of this Agreement, any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon the legality or enforceability of any other provision of this Agreement.
14. **Counterparts.** This Agreement may be executed (including by facsimile or PDF) in two or more counterparts which together shall constitute a single agreement.
15. **Successors and Assigns.** This Agreement shall not be assignable by any of the parties to this Agreement. This Agreement, however, shall be binding on successors of the parties hereto.
16. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and is not enforceable by any other persons.

17. **Fees and Expenses.** Neither the Company, on the one hand, nor the Icahn Group, on the other hand, will be responsible for any fees or expenses of the other in connection with this Agreement.
18. **Interpretation and Construction.** Each of the parties hereto acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this Agreement, and that it has executed the same with the advice of said independent counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted or prepared it is of no application and is hereby expressly waived by each of the parties hereto, and any controversy over interpretations of this Agreement shall be decided without regards to events of drafting or preparation. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Unless context otherwise requires, references herein to Exhibits, Sections or Schedules mean the Exhibits, Sections or Schedules attached to this Agreement. The term “including” shall be deemed to mean “including without limitation” in all instances. In all instances, the term “or” shall not be deemed to be exclusive.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement, or caused the same to be executed by its duly authorized representative as of the date first above written.

OCCIDENTAL PETROLEUM CORPORATION

By: /s/ Cedric W. Burgher

Name: Cedric W. Burgher

Title: Senior Vice President and Chief Financial Officer

[Signature Page to Director Appointment and Nomination Agreement between
Occidental Petroleum Corporation and the Icahn Group]

ICAHN GROUP

CARL C. ICAHN

/s/ Carl C. Icahn

Carl C. Icahn

ANDREW LANGHAM

/s/ Andrew Langham

Andrew Langham

NICHOLAS GRAZIANO

/s/ Nicholas Graziano

Nicholas Graziano

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, its general partner

By: Barberry Corp., its sole member

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Secretary; Treasurer

HOPPER INVESTMENTS LLC

By: Barberry Corp., its sole member

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Secretary; Treasurer

BARBERRY CORP.

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Secretary; Treasurer

[Signature Page to Director Appointment and Nomination Agreement between
Occidental Petroleum Corporation and the Icahn Group]

ICAHN PARTNERS LP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN PARTNERS MASTER FUND LP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN ENTERPRISES G.P. INC.

By: /s/ Keith Cozza

Name: Keith Cozza

Title: President and Chief Executive Officer

ICAHN ENTERPRISES HOLDINGS L.P.

By: Icahn Enterprises G.P. Inc., its general partner

By: /s/ Keith Cozza

Name: Keith Cozza

Title: President and Chief Executive Officer

IPH GP LLC

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN CAPITAL LP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

[Signature Page to Director Appointment and Nomination Agreement between
Occidental Petroleum Corporation and the Icahn Group]

ICAHN ONSHORE LP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN OFFSHORE LP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Chief Operating Officer

BECKTON CORP

By: /s/ Keith Cozza

Name: Keith Cozza

Title: Secretary; Treasurer

**ACCEPTED AND AGREED SOLELY
WITH RESPECT TO THE PROVISIONS
APPLICABLE TO THE NEW INDEPENDENT
DIRECTOR:**

/s/ Margarita Paláu-Hernández

Margarita Paláu-Hernández

[Signature Page to Director Appointment and Nomination Agreement between
Occidental Petroleum Corporation and the Icahn Group]

SCHEDULE A

CARL C. ICAHN

ANDREW LANGHAM

NICHOLAS GRAZIANO

HIGH RIVER LIMITED PARTNERSHIP

HOPPER INVESTMENTS LLC

BARBERRY CORP.

ICAHN PARTNERS LP

ICAHN PARTNERS MASTER FUND LP

ICAHN ENTERPRISES G.P. INC.

ICAHN ENTERPRISES HOLDINGS L.P.

IPH GP LLC

ICAHN CAPITAL LP

ICAHN ONSHORE LP

ICAHN OFFSHORE LP

BECKTON CORP.

EXHIBIT A

RESIGNATION

March 25, 2020

Board of Directors
Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046

Re: Resignation

Ladies and Gentlemen:

This irrevocable resignation is delivered pursuant to that certain Director Appointment and Nomination Agreement, dated as of March 25, 2020 (the "Agreement") among Occidental Petroleum Corporation, the Icahn Group and, solely with respect to the provisions applicable thereto, the New Independent Director. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

Pursuant to Sections 1(d) and 1(e) of the Agreement, effective only upon, and subject to, such time as the Icahn Group (together with the Icahn Affiliates) ceases collectively to beneficially own (as defined in Rule 13d-3 (as in effect from time to time) promulgated by the SEC under the Exchange Act) an aggregate Net Long Position in at least 44,313,635 Common Shares, I hereby irrevocably resign from my position as a director of the Company and from any and all committees of the Board on which I serve; *provided, however*, that if this resignation is tendered pursuant to Section 1(d) of the Agreement, this resignation shall not be effective if any other resignation of an Icahn Designee is tendered and accepted pursuant to Section 1(d) of the Agreement (and the Icahn Group shall determine in its sole discretion which resignation of the Icahn Designees shall be effective) unless and until the Icahn Group (together with the Icahn Affiliates) ceases collectively to beneficially own (as defined in Rule 13d-3 (as in effect from time to time) promulgated by the SEC under the Exchange Act) an aggregate Net Long Position in at least 22,156,817 Common Shares.

Sincerely,

Name:

EXHIBIT B

[PRESS RELEASE]

EXHIBIT C

[CONFIDENTIALITY AGREEMENT]

OCCIDENTAL PETROLEUM CORPORATION

March 25, 2020

To: Each of the persons or entities listed on Schedule A (the "Icahn Group" or "you")

Ladies and Gentlemen:

This letter agreement shall become effective upon the appointment of any Icahn Designee to the Board of Directors (the "Board") of Occidental Petroleum Corporation (the "Company"). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Director Appointment and Nomination Agreement (the "Nomination Agreement"), dated as of March 25, 2020, among the Company, the Icahn Group and, solely with respect to the provisions applicable thereto, the New Independent Director. The Company understands and agrees that, subject to the terms of, and in accordance with, this letter agreement, an Icahn Designee may, if and to the extent he or she desires to do so, disclose information he or she obtains while serving as a member of the Board to you and your Representatives (as hereinafter defined), and may discuss such information with any and all such persons, subject to the terms and conditions of this Agreement, and that other members of the Board may similarly disclose information to you. As a result, you may receive certain non-public information regarding the Company. You acknowledge that this information is proprietary to the Company and may include trade secrets or other business information the disclosure of which could harm the Company. In consideration for, and as a condition of, the information being furnished to you and your agents, representatives, attorneys, advisors, directors, officers or employees, subject to the restrictions in paragraph 2 (collectively, the "Representatives"), you agree to treat any and all information concerning or relating to the Company or any of its subsidiaries or current or former affiliates that is furnished to you or your Representatives (regardless of the manner in which it is furnished, including in written or electronic format or orally, gathered by visual inspection or otherwise) by any Icahn Designee, or by or on behalf of the Company or any Company Representative (as defined below), together with any notes, analyses, reports, models, compilations, studies, interpretations, documents, records or extracts thereof containing, referring, relating to, based upon or derived from such information, in whole or in part (collectively, "Evaluation Material"), in accordance with the provisions of this letter agreement, and to take or abstain from taking the other actions hereinafter set forth.

1. The term "Evaluation Material" does not include information that (i) is or has become generally available to the public other than as a result of a direct or indirect disclosure by you or your Representatives in violation of this letter agreement or any other obligation of confidentiality, (ii) was within your or any of your Representatives' possession on a non-confidential basis prior to its being furnished to you by any Icahn Designee, or by or on behalf of the Company or its agents, representatives, attorneys, advisors, directors (other than the Icahn Designees), officers or employees (collectively, the "Company Representatives"), or (iii) is received from a source other than any Icahn Designee, the Company or any of the Company Representatives; *provided*, that in the case of (ii) or (iii) above, the source of such information was not believed by you, after reasonable inquiry, to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Company or any other person with respect to such information at the time the information was disclosed to you.

2. You and your Representatives will, and you will cause your Representatives to, (a) keep the Evaluation Material strictly confidential and (b) not disclose any of the Evaluation Material in any manner whatsoever without the prior written consent of the Company; *provided, however*, that you may privately disclose any of such information: (A) to your Representatives (i) who need to know such information for the purpose of advising you on your investment in the Company and (ii) who are informed by you of the confidential nature of such information and agree to be bound by the terms of this Agreement as if they were a party hereto; *provided, further*, that you will be responsible for any violation of this letter agreement by your Representatives as if they were parties to this letter agreement; and (B) to the Company and the Company Representatives. It is understood and agreed that no Icahn Designee shall disclose to you or your Representatives any Legal Advice (as defined below) that may be included in the Evaluation Material with respect to which such disclosure would constitute waiver of the Company's attorney client privilege or attorney work product privilege. Notwithstanding the foregoing, upon your request, the Company will enter into an agreement or other document with you that provide for such disclosure of Legal Advice to you in a manner as to preserve attorney client privilege and attorney work product, *provided* that no Icahn Designee shall not have taken any action, or failed to take any action, that has the purpose or effect of waiving attorney-client privilege or attorney work product privilege with respect to any portion of such Legal Advice and a reputable outside legal counsel of national standing shall have provided the Company with a written opinion that such disclosure will not waive the Company's attorney client privilege or attorney work product privilege with respect to such Legal Advice. "Legal Advice" as used in this letter agreement shall be solely and exclusively limited to the advice provided by legal counsel and shall not include factual information or the formulation or analysis of business strategy that is not protected by the attorney-client or attorney work product privilege.

3. In the event that you or any of your Representatives are required by applicable subpoena, legal process or other legal requirement to disclose any of the Evaluation Material, you will promptly notify (except where such notice would be legally prohibited) the Company in writing by email, facsimile and certified mail so that the Company may seek a protective order or other appropriate remedy (and if the Company seeks such an order, you will provide such cooperation as the Company shall reasonably request), at its cost and expense. Nothing herein shall be deemed to prevent you or your Representatives, as the case may be, from honoring a subpoena, legal process or other legal requirement that requires discovery, disclosure or production of the Evaluation Material if (a) you produce or disclose only that portion of the Evaluation Material which your outside legal counsel of national standing advises you in writing is legally required to be so produced or disclosed and you inform the recipient of such Evaluation Material of the existence of this letter agreement and the confidential nature of such Evaluation Material; or (b) the Company consents in writing to having the Evaluation Material produced or disclosed pursuant to the subpoena, legal process or other legal requirement. In no event will you or any of your Representatives oppose action by the Company to obtain a protective order or other relief to prevent the disclosure of the Evaluation Material or to obtain reliable assurance that confidential treatment will be afforded the Evaluation Material. For the avoidance of doubt, it is understood that there shall be no "legal requirement" requiring you to disclose any Evaluation Material solely by virtue of the fact that, absent such disclosure, you would be prohibited from purchasing, selling, or engaging in derivative or other voluntary transactions with respect to the Common Shares of the Company or otherwise proposing or making an offer to do any of the foregoing, or you would be unable to file any proxy or other solicitation materials in compliance with Section 14(a) of the Exchange Act or the rules promulgated thereunder.

4. You acknowledge that (a) none of the Company or any of the Company Representatives makes any representation or warranty, express or implied, as to the accuracy or completeness of any Evaluation Material, and (b) none of the Company or any of the Company Representatives shall have any liability to you or to any of your Representatives relating to or resulting from the use of the Evaluation Material or any errors therein or omissions therefrom. You and your Representatives (or anyone acting on your or their behalf) shall not directly or indirectly initiate contact or communication with any executive or employee of the Company other than the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, General Counsel, or such other persons approved in writing by the foregoing or the Board concerning Evaluation Material, or to seek any information in connection therewith from any such person other than the foregoing, without the prior consent of the Company; *provided, however*, the restriction in this sentence shall not in any way apply to any Icahn Designee acting in his or her capacity as a Board member (nor shall it apply to any other Board members).
5. All Evaluation Material shall remain the property of the Company. Neither you nor any of your Representatives shall by virtue of any disclosure of or your use of any Evaluation Material acquire any rights with respect thereto, all of which rights (including all intellectual property rights) shall remain exclusively with the Company. At any time after the date on which no Icahn Designee is a director of the Company, upon the request of the Company for any reason, you will promptly return to the Company or destroy all hard copies of the Evaluation Material and use commercially reasonable efforts to permanently erase or delete all electronic copies of the Evaluation Material in your or any of your Representatives' possession or control (and, upon the request of the Company, shall promptly certify to the Company that such Evaluation Material has been erased or deleted, as the case may be). Notwithstanding the return or erasure or deletion of Evaluation Material, you and your Representatives will continue to be bound by the obligations contained herein for as long as any Evaluation Material is retained by you or your Representatives.
6. You acknowledge, and will advise your Representatives, that the Evaluation Material may constitute material non-public information under applicable federal and state securities laws, and you agree that you shall not, and you shall use your commercially reasonable efforts to ensure that your Representatives do not, trade or engage in any derivative or other transaction on the basis of such information in violation of such laws.
7. You hereby represent and warrant to the Company that (i) you have all requisite company power and authority to execute and deliver this letter agreement and to perform your obligations hereunder, (ii) this letter agreement has been duly authorized, executed and delivered by you, and is a valid and binding obligation, enforceable against you in accordance with its terms, (iii) this letter agreement will not result in a violation of any terms or conditions of any agreements to which you are a party or by which you may otherwise be bound or of any law, rule, license, regulation, judgment, order or decree governing or affecting you, and (iv) your entry into this letter agreement does not require approval by any owners or holders of any equity or other interest in you (except as has already been obtained).
8. Any waiver by the Company of a breach of any provision of this letter agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this letter agreement. The failure of the Company to insist upon strict adherence to any term of this letter agreement on one or more occasions shall not be considered a waiver or deprive the Company of the right thereafter to insist upon strict adherence to that term or any other term of this letter agreement.

9. You acknowledge and agree that the value of the Evaluation Material to the Company is unique and substantial, but may be impractical or difficult to assess in monetary terms. You further acknowledge and agree that in the event of an actual or threatened violation of this letter agreement, immediate and irreparable harm or injury would be caused for which money damages would not be an adequate remedy. Accordingly, you acknowledge and agree that, in addition to any and all other remedies which may be available to the Company at law or equity, the Company shall be entitled to an injunction or injunctions to prevent breaches of this letter agreement and to enforce specifically the terms and provisions of this letter agreement exclusively in the Court of Chancery or other federal or state courts of the State of Delaware. In the event that any action shall be brought in equity to enforce the provisions of this letter agreement, you shall not allege, and you hereby waive the defense, that there is an adequate remedy at law.
10. Each of the parties (a) consents to submit itself to the personal jurisdiction of the Court of Chancery or other federal or state courts of the State of Delaware in the event any dispute arises out of this letter agreement or the transactions contemplated by this letter agreement, (b) agrees that it shall not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, (c) agrees that it shall not bring any action relating to this letter agreement or the transactions contemplated by this letter agreement in any court other than the Court of Chancery or other federal or state courts of the State of Delaware, and each of the parties irrevocably waives the right to trial by jury, (d) agrees to waive any bonding requirement under any applicable law, in the case any other party seeks to enforce the terms by way of equitable relief, and (e) irrevocably consents to service of process by a reputable overnight delivery service, signature requested, to the address of such party's principal place of business or as otherwise provided by applicable law. THIS LETTER AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS EXECUTED AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES OF SUCH STATE.
11. This letter agreement and the Nomination Agreement contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersedes all prior or contemporaneous agreements or understandings, whether written or oral. This letter agreement may be amended only by an agreement in writing executed by the parties hereto.
12. All notices, consents, requests, instructions, approvals and other communications provided for in this letter agreement and all legal process in regard to this letter agreement shall be in writing and shall be deemed validly given, made or served, if (a) given by telecopy and email, when such telecopy is transmitted to the telecopy number set forth below and sent to the email address set forth below and the appropriate confirmation is received or (b) if given by any other means, when actually received during normal business hours at the address specified in this subsection:

if to the Company:

Occidental Petroleum Corporation
5 Greenway Plaza, Suite 110
Houston, TX 77046
Email: Marcia_E._Backus@oxy.com
Attention: Marcia E. Backus, General Counsel

With copies to (which shall not constitute notice):

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Email: gschoen@cravath.com
khallam@cravath.com
awein@cravath.com

Attention:

George F. Schoen
O. Keith Hallam, III
Allison M. Wein

if to the Icahn Group:

Icahn Associates Corp.
16690 Collins Avenue, Penthouse Suite
Sunny Isles Beach, FL 33160
Attention: Keith Cozza, President and CEO
Email: kcozza@sfire.com

With a copy to (which shall not constitute notice):

Icahn Associates Corp.
16690 Collins Avenue, Penthouse Suite
Sunny Isles Beach, FL 33160
Attention: Jesse Lynn, General Counsel
Email: jlynn@sfire.com

13. If at any time subsequent to the date hereof, any provision of this letter agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect, but the illegality or unenforceability of such provision shall have no effect upon the legality or enforceability of any other provision of this letter agreement.
14. This letter agreement may be executed (including by facsimile or PDF) in two or more counterparts which together shall constitute a single agreement.
15. This letter agreement and the rights and obligations herein may not be assigned or otherwise transferred, in whole or in part, by you without the express written consent of the Company. This letter agreement, however, shall be binding on successors of the parties to this letter agreement.
16. The Icahn Group shall cause any Replacement for an Icahn Designee appointed to the Board pursuant to the Nomination Agreement to execute a copy of this letter agreement.
17. This letter agreement shall expire two (2) years from the date on which no Icahn Designee remains a director of the Company; except that you shall maintain in accordance with the confidentiality obligations set forth herein any Evaluation Material (i) constituting trade secrets for such longer time as such information constitutes a trade secret of the Company as defined under 18 U.S.C. § 1839(3) and (ii) retained pursuant to Section 5.
18. No licenses or rights under any patent, copyright, trademark, or trade secret are granted or are to be implied by this letter agreement.

19. Each of the parties acknowledges that it has been represented by counsel of its choice throughout all negotiations that have preceded the execution of this letter agreement, and that it has executed the same with the advice of said counsel. Each party and its counsel cooperated and participated in the drafting and preparation of this agreement and the documents referred to herein, and any and all drafts relating thereto exchanged among the parties shall be deemed the work product of all of the parties and may not be construed against any party by reason of its drafting or preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this agreement against any party that drafted or prepared it is of no application and is hereby expressly waived by each of the parties, and any controversy over interpretations of this agreement shall be decided without regards to events of drafting or preparation. The term “including” shall in all instances be deemed to mean “including without limitation.” In all instances, the term “or” shall not be deemed to be exclusive.

[Signature Pages Follow]

Please confirm your agreement with the foregoing by signing and returning one copy of this letter agreement to the undersigned, whereupon this letter agreement shall become a binding agreement between you and the Company.

Very truly yours,

OCCIDENTAL PETROLEUM CORPORATION

By: _____
Name:
Title:

Accepted and agreed as of the date first written above:

CARL C. ICAHN

Carl C. Icahn

ANDREW LANGHAM

Andrew Langham

NICHOLAS GRAZIANO

Nicholas Graziano

HIGH RIVER LIMITED PARTNERSHIP

By: Hopper Investments LLC, its general partner
By: Barberry Corp., its sole member

By: _____
Name: Keith Cozza
Title: Secretary; Treasurer

[Signature Page to Confidentiality Agreement between Occidental Petroleum Corporation and the Icahn Group]

HOPPER INVESTMENTS LLC

By: Barberry Corp., its sole member

By: _____

Name: Keith Cozza

Title: Secretary; Treasurer

BARBERRY CORP.

By: _____

Name: Keith Cozza

Title: Secretary; Treasurer

ICAHN PARTNERS LP

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN PARTNERS MASTER FUND LP

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN ENTERPRISES G.P. INC.

By: _____

Name: Keith Cozza

Title: President; and Chief Executive Officer

ICAHN ENTERPRISES HOLDINGS L.P.

By: Icahn Enterprises G.P. Inc., its general partner

By: _____

Name: Keith Cozza

Title: President; and Chief Executive Officer

[Signature Page to Confidentiality Agreement between Occidental Petroleum Corporation and the Icahn Group]

IPH GP LLC

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN CAPITAL LP

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN ONSHORE LP

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

ICAHN OFFSHORE LP

By: _____

Name: Keith Cozza

Title: Chief Operating Officer

BECKTON CORP

By: _____

Name: Keith Cozza

Title: Secretary; Treasurer

[Signature Page to Confidentiality Agreement between Occidental Petroleum Corporation and the Icahn Group]

SCHEDULE A

Barberry Corp.

Beckton Corp.

Icahn Capital LP

Icahn Enterprises Holdings L.P.

Icahn Enterprises G.P. Inc.

Icahn Offshore LP

Icahn Onshore LP

Icahn Partners LP

Icahn Partners Master Fund LP

IPH GP LLC

Icahn Capital LP

High River Limited Partnership

Hopper Investments LLC

Carl C. Icahn

Andrew Langham

Nicholas Graziano

NEWS RELEASE



Occidental Enters into Definitive Agreement with Carl C. Icahn

Three New Directors Appointed to Board in Addition to New Chairman Icahn to Support All Occidental Nominees for Election at 2020 Annual Meeting

HOUSTON, TX – March 25, 2020 – Occidental Petroleum Corporation (“Occidental” or the “Company”) (NYSE: OXY) announced today that it has entered into an agreement with Carl C. Icahn and affiliated entities (the “Icahn Group”) to add three new Icahn designated directors to Occidental’s Board.

Pursuant to the agreement, effective immediately Andrew Langham, Nicholas Graziano and Margarita Paláu-Hernández have been appointed to Occidental’s Board of Directors (the “Board”) as new independent directors. Existing directors Spencer Abraham, Eugene Batchelder, Margaret M. Foran and Elisse B. Walter will retire from the Board effective at the Company’s 2020 Annual Meeting of Stockholders (the “2020 Annual Meeting”). With today’s appointments and planned retirements and the previously announced appointment of Stephen I. Chazen as Chairman of the Board, following the 2020 Annual Meeting of Stockholders, the Board will be comprised of 11 directors, 10 of whom are independent.

“We are pleased to reach this agreement with Carl Icahn, and we look forward to working with Carl Icahn’s Board members and the rest of the Board and management as a team to navigate the current difficult environment,” said Stephen I. Chazen, Chairman of the Board.

Carl C. Icahn commented: “We believe Oxy is a good company with good assets. We are pleased to have reached this settlement and can now focus on working with Steve Chazen to enhance value for all Oxy stockholders.”

Occidental has also adopted certain corporate governance-enhancing amendments to its amended and restated by-laws, effective immediately, and agreed to recommend that the Occidental stockholders adopt amendments to Occidental’s restated certificate of incorporation at the 2020 Annual Meeting that enhance stockholder rights to act by written consent, call special meetings and nominate directors.

The new directors will be represented on the committees of the Board and newly formed committees as set forth in the agreement. The Board has also agreed to create an Oversight Committee that will include two of the Icahn directors. The Oversight Committee will work closely with management to provide regular Board input and oversight, and, along with the Board, will be apprised of any inquiries or indications of interest relating to the Company or its assets.

The Icahn Group has withdrawn its slate of director nominees and stockholder proposals at the 2020 Annual Meeting and agreed to vote in favor of the Board’s director nominees and amendments to Occidental’s restated certificate of incorporation that enhance Occidental’s corporate governance. The Icahn Group owns approximately 9.9% of the outstanding shares of the Company’s common stock.

Under the agreement, the Icahn Group will petition the Delaware Supreme Court to withdraw its pending appeal before the Court relating to the Icahn Group's books and records request under Section 220 of the Delaware General Corporation Law. The Icahn Group has also agreed to certain other customary voting and standstill provisions.

Messrs. Langham and Graziano and Ms. Paláu-Hernández will each initially serve a term expiring at the 2020 Annual Meeting and the Company has agreed to include each of them on its slate of nominees for election as directors at the 2020 Annual Meeting.

The complete agreement by and among Occidental, the Icahn Group and the other parties thereto will be filed on a Form 8-K with the U.S. Securities and Exchange Commission (the "SEC").

About Occidental

Occidental is an international oil and gas exploration and production company with operations in the United States, Middle East and Latin America. We are the leading producer and largest acreage holder in the Permian Basin. Occidental is advancing a lower-carbon future with our subsidiary Oxy Low Carbon Ventures, which promotes innovative technologies that drive cost efficiencies and economically grow our business while reducing emissions. Occidental's midstream and marketing segment provides flow assurance for our oil and gas segment, while maximizing the value of our products. OxyChem, our chemical subsidiary, is among the top three U.S. producers for the principal products it manufactures and markets. Occidental posts or provides links to important information on our website at oxy.com.

Forward Looking Statements

This communication contains "forward-looking statements" within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, including but not limited to statements about Occidental's expectations, beliefs, plans or forecasts. Forward-looking statements involve estimates, expectations, projections, goals, forecasts, assumptions, risks and uncertainties, many of which involve factors or circumstances that are beyond Occidental's control. Actual results may differ from anticipated results, sometimes materially, and reported or expected results should not be considered an indication of future performance.

Factors that could cause actual results to differ and that may affect Occidental's results of operations and financial position appear in Part I, Item 1A "Risk Factors" of Occidental's Annual Report on Form 10-K for the year ended December 31, 2019 and in Occidental's other filings with the SEC.

Because the factors referred to above could cause actual results or outcomes to differ materially from those expressed or implied in any forward-looking statements, you should not place undue reliance on any such forward-looking statements. Further, any forward-looking statement speaks only as of the date of this communication and, unless legally required, Occidental does not undertake any obligation to update any forward-looking statement, as a result of new information, future events or otherwise.

Additional Information and Where to Find It

Occidental intends to file with the SEC a proxy statement on Schedule 14A, containing a form of WHITE proxy card, with respect to its solicitation of proxies for Occidental's 2020 Annual Meeting of Stockholders. This communication is not a substitute for any proxy statement or other document that Occidental may file with the SEC in connection with any solicitation by Occidental.

INVESTORS AND SECURITY HOLDERS ARE URGED TO READ THE PROXY STATEMENT (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) FILED BY OCCIDENTAL AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT ANY SOLICITATION BY OCCIDENTAL. Investors and security holders may obtain copies of these documents and other documents filed with the SEC by Occidental free of charge through the website maintained by the SEC at www.sec.gov. Copies of the documents filed by Occidental will also be available free of charge by accessing Occidental's website at www.oxy.com.

Participants

Occidental, its directors and executive officers and other members of management and employees are or will be participants in the solicitations of proxies by Occidental. Information about Occidental's executive officers and directors, and their ownership of Occidental by security holdings or otherwise, is available in Occidental's Annual Report on Form 10-K for the year ended December 31, 2019, which was filed with the SEC on February 28, 2020, in its proxy statement for the 2019 Annual Meeting which was filed with the SEC on March 28, 2019 and in its Form 8-Ks filed with the SEC on January 7, 2020 and March 24, 2020. To the extent holdings of Occidental securities reported in the proxy statement for the 2019 Annual Meeting or in such Form 8-K have changed, such changes have been or will be reflected on Statements of Change in Ownership on Forms 3, 4 or 5 filed with the SEC. These documents are available free of charge at the SEC's website at www.sec.gov.

Contacts

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Melissa E. Schoeb

713-366-5615

melissa_schoeb@oxy.com

or

Investors:

Jeff Alvarez

713-215-7864

jeff_alvarez@oxy.com

Dan Burch

MacKenzie Partners, Inc.

212-929-5748

dburch@mackenziepartners.com
