



GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

State of Utah  
Department of Commerce  
Division of Securities

FRANCINE A. GIANI  
*Executive Director*

THAD LEVAR  
*Deputy Director*

KEITH WOODWELL  
*Director, Division of Securities*

November 3, 2011

Mr. Terry D. Nelson  
Foley & Lardner LLP  
Verex Plaza  
150 East Gilman Street  
Madison, WI 53703-1481

Re: Green Bay Packers, Inc.  
Request for No Action Position  
File #: B01050166

Dear Mr. Nelson:

In response to your letter dated October 13, 2011, the Utah Division of Securities (the "Division") has reviewed your request for a no-action letter pursuant to the authority granted by §61-1-25(5) of the Utah Uniform Securities Act ("Act") and R164-25-5 of the Utah Administrative Code ("UAC"). In your request, you describe the proposed issuance by Green Bay Packers, Inc. (the "Company") of the Company's common stock to members of the public in Utah commencing on or around November 15, 2011. Your letter requests that the Division take a no-action position on registration and licensing requirements for the proposed offering, as outlined therein.

Based upon the facts presented in your request, and in reliance upon your opinion as legal counsel, the staff of the Division will not recommend any enforcement or administrative action should the transaction proceed as described in your request. To avoid unnecessary restatement or summarization of the facts set forth in your request, a copy of your letter, dated October 13, 2011, and the Securities and Exchange Commission's no-action letter, dated August 26, 1997, with the correspondence included therein, is attached to this letter and hereby incorporated by reference.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the opinion of the Division staff on enforcement or administrative actions.

Terry D. Nelson  
FOLEY & LARDNER LLP  
November 3, 2011  
Page 2

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the transaction described above and will have no value for future similar transactions. Finally, the issuance of a no-action letter does not absolve any party from complying with the antifraud provisions contained in §61-1-1 of the Act.

Very truly yours,

UTAH DIVISION OF SECURITIES

A handwritten signature in black ink, appearing to read "Benjamin N. Johnson", with a long horizontal flourish extending to the right.

Benjamin N. Johnson  
Director of Corporate Finance

BNJ

Enclosure



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

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150 EAST GILMAN STREET  
MADISON, WI 53703-1481  
POST OFFICE BOX 1497  
MADISON, WI 53701.1497  
608.257.5035 TEL  
608.258.4258 FAX  
foley.com

October 13, 2011

CONFIDENTIAL

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VIA FEDERAL EXPRESS

WRITER'S DIRECT LINE  
608.258.4215  
tnelson@foley.com EMAIL

CLIENT/MATTER NUMBER  
0602840103

1 - 2011

Department of Commerce  
Division of Securities  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, UT 84111

Utah Department of Commerce  
Division of Securities

Re: Request for an Opinion or No-Action Letter Relating to Agent Registration

Ladies and Gentlemen:

On behalf of Green Bay Packers, Inc., a Wisconsin nonprofit stock corporation (the "Company"), we request the opinion of the Director of the Division of Securities (the "Director") or, in the alternative, a "no-action" letter by the Director relating to a proposed 2011 public offering by the Company of shares (the "Shares") of its common stock to members of the public in Utah commencing on or around November 15, 2011 (hereinafter the "2011 Offering") without any officer, employee or director of the Company registering as an "agent" under the Utah Uniform Securities Act (the "Act").

In connection with our request for an opinion or no-action letter on behalf of the Company, we have enclosed for your review a copy of the no-action letter and supporting documentation (the "SEC Letter") from the Securities and Exchange Commission dated August 26, 1997 relating to (1) the Company's 1997-1998 Offering (hereinafter, the "1997-1998 Offering") of Shares without registration of the Shares as securities under the Securities Act of 1933 (the "'33 Act") and (2) the nonregistration by the Company under Section 12(g) of the Securities Exchange Act of 1934. We are providing a copy of the SEC Letter to you, in part, to avoid restating the facts about the Company, the proposed 2011 Offering and the Company's basis for determining that the Shares do not constitute "securities" as defined under Section 2(1) of the '33 Act and Section 61-1-13(1)(ee)(i) of the Act. You are advised that the Shares to be offered and sold in the 2011 Offering will be materially the same as the Shares issued in the 1997-1998 Offering. The offering differences between the Company's 2011 Offering and the 1997-1998 Offering are expected to be as follows: (i) the offering price per Share to individual purchasers is likely to exceed the price per Share in the 1997-1998 Offering, which was \$200 (for example, it may be \$250 per share); (ii) entities may be allowed to purchase Shares, but the price per Share may be greater than the price per Share to be paid by individuals; and (iii) subscribers will be able to purchase the Shares online. We do not believe that such differences should have any effect on whether the Shares are "securities" under the '33 Act or the Act. As you know, the definition of a "security" under the '33 Act is virtually the same as the definition of a "security" under Section 61-1-13(1)(ee)(i) of the Act. You will note from

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TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON D C

Utah Department of Commerce  
October 13, 2011  
Page 2

the SEC Letter that the primary basis for the Company's position is that the Shares lack the significant characteristics generally associated with "stock."

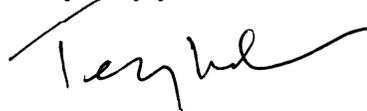
In addition, pursuant to Sec. 61-1-14(1)(f)(i) of the Act, the Shares offered, if they are securities, would be exempt from the registration requirements under the Act in that they are being issued by *any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic [Emphasis added] or reformatory purposes, or as a chamber of commerce, local industrial development corporation, or trade or professional association [Emphasis added].*

If you take the position that the Shares are securities under the Act and, therefore, the Company is required to rely on the not-for-profit exemption under the Act to offer and sell the Shares in Delaware without registering them, then it appears that there is no exemption under the Act from the agent registration requirements for the officers, directors and/or employees of the Company who will take part in the distribution of the Shares. You are advised that such persons will not receive any commissions or other special remuneration, either directly or indirectly, for offering or selling the Shares. Of course, if you agree that the Shares are not securities under the Act, then the agent registration provisions under the Act are not relevant.

Taking into account that the Shares to be offered in the 2011 Offering are materially the same as under the 1997-1998 Offering which were the subject of the SEC Letter, we respectfully request, pursuant to your authority under Section R164-25-5 of the Act, that the Director issue an opinion that the Shares do not constitute "securities" as that term is defined under Section 61-1-13(1)(ee)(i) of the Act or, in the alternative, provide a "no-action" letter relating to the Company conducting the offer and sale of the Shares in Utah without any officer, employee or director registering as an agent under the Act on the basis that, under the circumstances, agent registration of such persons under the Act is not necessary for the benefit and welfare of the investing public in Utah. A check in the amount of \$120.00 in payment of the requisite request fee is enclosed.

If you have any questions regarding this request or require additional information, please call me at (608) 258-4215, or call Ann Recob at (608) 258-4279.

Very truly yours,



Terry D. Nelson

Enclosures

cc: Jason Wied, Esq.  
Green Bay Packers, Inc.  
Patrick G. Quick  
Ann T. Recob



DIVISION OF  
CORPORATION FINANCE

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

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OCT 14 2011

Utah Department of Commerce  
Division of Securities

August 26, 1997

Patrick G. Quick, Esq.  
Foley & Lardner  
Firststar Center  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202-5367

Re: Green Bay Packers, Inc.

Dear Mr. Quick:

In regard to your letters of June 16, July 8 and August 22, 1997 our response thereto is attached to the enclosed photocopy of your correspondences. By doing this, we avoid having to recite or summarize the facts set forth in your letters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Catherine T. Dixon".

Catherine T. Dixon  
Chief Counsel

August 26, 1997

RESPONSE OF **THE** OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

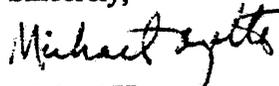
**Re:** Green Bay Packers, Inc. ("Company")  
Incoming **letters** dated June 16, July 8, and August 22, 1997

Based on the facts presented, this Division will not recommend enforcement action to the Commission **if**, in reliance on your opinion of counsel that **the** Company's common stock is not a **security** within the meaning of Section **2(a)(1)** of the Securities **Act** of 1933 or Section **3(a)(10)** of the Securities Exchange Act of 1934, the Company proceeds as described in your letters without registration under either statute.

Your request for **confidential** treatment under Rule 81**(b)** has been granted **until** the earlier of 120 days **from** the date of this response or the date of **any** public announcement of the matters discussed in this correspondence.

This position is based on the representations made to the Division in your **letters**. Any different **facts** or conditions might require the Division to reach a different conclusion. This response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented.

Sincerely,



Michael Hyatte  
Special Counsel

# FOLEY & LARDNER

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SAN FRANCISCO  
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TAMPA  
WASHINGTON D.C.  
WEST PALM BEACH

WRITER'S DIRECT LINE

(414) 297-5678

August 22, 1997

**VIA FACSIMILE  
CONFIDENTIAL**

Office of Chief Counsel  
Division of Corporation **Finance**  
Securities and **Exchange** Commission  
Judiciary **Plaza**  
450 **Fifth** Street, **N.W.**  
Washington, DC 20549

RECEIVED  
OFFICE OF CHIEF COUNSEL  
97 AUG 25 PM 2:43

**Attn:** Michael G. Hyatte, Special Counsel

**Re: Confidential Treatment of the Attached Request**

Dear Mr. Hyatte:

Because **many** of the facts surrounding the proposed offering of stock by the **Green Bay Packers, Inc.** described in the enclosed supplemental letter and our "no-action" letter requests dated June 16, 1997 (the "**Initial Letter**") and July 8, 1997 (the "**Second Letter**") have not yet been **made** public, we continue to respectfully request, pursuant to 17 **C.F.R.** Section **200.81(b)**, confidential treatment of the enclosed letter, the **Initial Letter** and **the Second Letter** and the **Staff** response thereto until 120 days after the date of the **Staff's response**, or such earlier date as the Staff is advised that **all** information in the enclosed letter, the **Initial Letter** and the **Second Letter** (and the **Staff's** response thereto) has **been** made public.

If you have **any** questions concerning **this** request, please contact the undersigned at (414) 297-5678 or John Wilson at (414) 297-5642. In the event **that**, upon **review of this**

ESTABLISHED 1842

A MEMBER OF GLOBALIX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, PARIS, SINGAPORE, ST. LOUIS, NY AND TAMPA

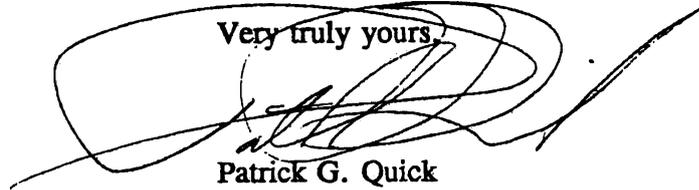
Securities and Exchange Commission

August 22, 1997

Page 2

request, the Staff is not inclined to grant our request for confidentiality, we ask that you so advise us immediately so that we may have an opportunity to address your concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick G. Quick", is written over the typed name. The signature is somewhat stylized and scribbled.

Patrick G. Quick

Enclosures

cc: Lance A. *Lopes*, Esq.  
Green Bay Packers, Inc.  
Bernard S. Kubale  
John K. Wilson  
Foley & Lardner

# FOLEY & LARDNER

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WRITER'S DIRECT LINE

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TAMPA  
WASHINGTON D.C.  
WEST PALM BEACH

(414) 297-5678

August 22, 1997

**VIA FACSIMILE  
CONFIDENTIAL**

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

**Attn:** Michael G. Hyatte, Special Counsel

**Re: Submissions dated June 16, 1997 and July 8, 1997 regarding Green Bay Packers, Inc. - Proposed Stock Offering; Securities Act of 1933, Section 2(1); Securities Exchange Act of 1934, Section 3(a)(10)**

**Dear Mr. Hyatte:**

This letter is in response to our telephone **conversations** on August 7, 1997 and August 18, 1997 and **supplements our** "no-action" **letter** requests dated June 16, 1997 (the "Initial Letter") and July 8, 1997 (the "Second Letter") on behalf of **the** Green Bay **Packers, Inc.** (the "Company"). **Capitalized** terms used and not defined in **this** letter are used as defined in the Initial Letter and/or the Second Letter.

In **accordance with** our discussions, **the** Company has **advised** us that it **has determined** to **make** a revision to **the** Proposed **Bylaws**. **As** revised, if a holder of shares of Common **Stock** attempts to improperly transfer shares **of** Common **Stock**, then pursuant to Section 4 of Article **VI** of the Proposed **Bylaws** **the** Company **will have** the right, **but will** not **have** the obligation, to repurchase such **shares**. All other matters relating to the Proposed Offering would be **as described** in the Initial Letter and the **Second** Letter.

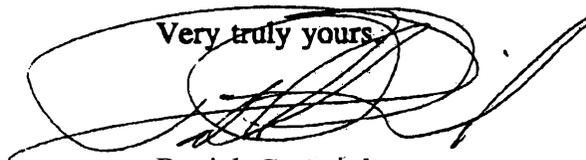
ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH **MEYER** OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, PARIS, SINGAPORE, STUTTGART AND TAIPEI

Securities and Exchange Commission  
August 22, 1997  
Page 2

Because many of the facts surrounding the Proposed Offering have not yet been made public, we continue to respectfully request confidential treatment of the requests relating to the Proposed Offering and the Staff's response thereto until 120 days after the date of the Staff's response, or such earlier date as Staff is advised that all the information in the Initial Letter, the Second Letter and this letter (and the Staff's response thereto) has been made public. As required by 17 C.F.R. Section 200.81(b), we have submitted a separate request, attached hereto, relating to confidential treatment of this letter.

If you have any questions or need additional information concerning the matters covered in this letter, the Initial Letter or the Second Letter, please contact the undersigned at (414) 297-5678 or John Wilson at (414) 297-5642. If for any reason the Staff does not concur with our conclusions or finds itself unable to reach the "no-action" position requested in the Initial Letter and the Second Letter, we respectfully request a conference with the Staff before the Staff issues any adverse written response to these letters.

Very truly yours,  


Patrick G. Quick

cc: Lance A. Lopes, Esq.  
Green Bay Packers, Inc.  
Bernard S. Kubale  
John K. Wilson  
Foley & Lardner

# FOLEY & LARDNER

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WRITER'S DIRECT LINE

(414) 297-5678

SACRAMENTO  
SAN DIEGO  
SAN FRANCISCO  
TALLAHASSEE  
TAMPA  
WASHINGTON D.C.  
WEST PALM BEACH

July 8, 1997

**VIA FEDERAL EXPRESS  
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Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, DC 20549

RECEIVED  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE  
97 JUL -9 AM 10:11

Re: **Confidential Treatment of the Attached Request**

Ladies and Gentlemen:

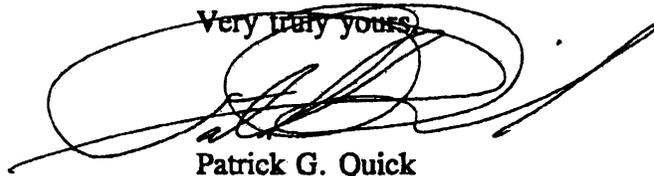
Because many of the facts surrounding the proposed offering of stock by the Green Bay Packers, Inc. described in the attached "no-action" letter request and our letter dated June 16, 1997 (the "Initial Letter"), have not yet been made public, we continue to respectfully request, pursuant to 17 C.F.R. Section 200.81(b), confidential treatment of the enclosed request and the Initial Letter and the Staff's response thereto until 120 days after the date of the Staff's response, or such earlier date as the Staff is advised that all information in the enclosed request and the Initial Letter (and the Staff's response thereto) has been made public.

If you have any questions concerning this request, please contact the undersigned at (414) 297-5678 or John Wilson at (414) 297-5642. In the event that, upon review of this

Securities and Exchange Commission  
June 16, 1997  
Page 2

request, the Staff is not inclined to grant our request for confidentiality, we ask that you so advise us immediately so that we may have an opportunity to address your concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick G. Quick", is written over the typed name. The signature is stylized and somewhat illegible due to overlapping loops and a long horizontal stroke extending to the right.

Patrick G. Quick

Enclosures

cc: Lance A. Lopes, Esq.  
Green Bay Packers, Inc.  
Bernard S. Kubale  
John K. Wilson  
Foley & Lardner

# FOLEY & LARDNER

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WRITER'S DIRECT LINE

(414) 297-5678

July 8, 1997

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, DC 20549

Re: Original Submission dated June 16, 1997 regarding Green Bay Packers, Inc. - Proposed Stock Offering; Securities Act of 1933, Section 2(1); Securities Exchange Act of 1934, Section 3(a)(10)

Ladies and Gentlemen:

Please refer to our letter dated June 16, 1997 (the "Initial Letter"), requesting, on behalf of the Green Bay Packers, Inc., a Wisconsin nonprofit stock corporation (the "Company"), that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "**Commission**") **not recommend** any enforcement action to the Commission in **connection** with a proposed offering **to members** of the public (the "Proposed Offering") of Stock **Units** representing fractional **shares** of the **Company's** Special Stock. I am writing to advise you of a change in the terms of the stock the Company will offer in the Proposed Offering and to seek to **confirm** that the Staff will not **recommend** any enforcement action if the Company proceeds under the revised terms. Capitalized terms used and not defined in this letter are **used** as defined in the initial **Letter**.

## I. BACKGROUND AND PROPOSED NEW TERMS

As the Initial Letter describes, the Company currently has one class of authorized capital stock, which is common stock, no par value ("Common Stock"), and the holders of Common Stock are entitled to one vote for each share held. The Company intended to authorize a second class of capital stock designated "Special Stock" and, in the Proposed Offering, to offer Special Stock for sale in the form of Stock **Units representing** a one one-thousandth fraction of a share of Special Stock. The rights of and restrictions upon holders of Common Stock and Special Stock would be identical, except that on **matters** submitted to a stockholder vote the

holders of the outstanding **shares** of Common Stock and Special Stock would vote together as a single class with (1) the holders of Common Stock entitled to one vote for each share held and (2) each holder of **Special Stock**, regardless of the number of shares or fractions of a share of Special Stock held, entitled to one one-ten thousandth vote.

Issues that the National Football League ("NFL") raised with respect to the Proposed **Offering** have required the Company to reconsider this approach. NFL rules impose **certain** member approval requirements relating to **transfers** of interests in an **NFL franchise**. The Company's public ownership is **unique** among NFL franchises, **and** it **was** necessary for the NFL to determine how the **membership approval requirements** apply to the Company. The **NFL's** tentative view is that (i) a "grandfather **status**" exists with respect to the Company dating back to the Company's 1950 offering of Common Stock, **(ii)** the "grandfather" extends to the Common Stock authorized in 1950, **(iii)** the Company could offer additional stock to the public **at** this time so long as the Company offered identical shares of Common Stock, **(iv)** offering the proposed **Special Stock**, with its reduced voting rights, would not fall within the "grandfather" and would require member approval and **(v)** the Company could, however, split the authorized and **outstanding** shares of Common **Stock** to reduce the **dilutive effect** on the voting power of existing stockholders of the issuance of additional shares of Common Stock.

Because the Company does not believe it **could** obtain NFL **member** approval for the Proposed Offering on a timely basis, if at **all** in light of the competitive spirit of the members, the Company intends to modify its plans for the Proposed Offering so that it may **offer** stock pursuant to the "grandfather" provision. The Company is now proposing to split the **10,000** authorized shares of Common Stock and 4,628 shares of Common Stock currently outstanding on a **1,000-to-1** basis as a result of which the Company would have **10,000,000** authorized shares of Common Stock and 4,628,000 outstanding shares of Common Stock. The limit on the number of shares of Common Stock outstanding prior to the Proposed Offering that may be held by one person will be raised from 200 to 200,000. The Company intends initially to offer up to 1,000,000 of the authorized but unissued shares of Common Stock ("New Shares") to the public in the Proposed Offering. The New Shares will have one vote per share, unlike the Stock **Units described** in the Initial Letter. **Under** the Proposed Bylaws, each individual holder will be prohibited from purchasing more than 200 New Shares. The transfer restrictions described in the Initial Letter will apply to the New Shares and continue to apply to outstanding shares of Common Stock. All other matters relating to the Proposed Offering would be as described in the **Initial** Letter, although the Company will revise the terms of the Proposed Articles and the Proposed Bylaws to eliminate references to Special Stock **and** to otherwise **conform** to the revised approach.

## II. OPINION AND ANALYSIS

We are of the opinion that the Proposed **Offering**, in the context and under the facts and circumstances set forth in the Initial Letter as modified above, does not involve the offering of stock constituting a "security" within the meaning of that term as **defined** in Section **2(1)** of the Securities Act and Section **3(a)(10)** of the Exchange Act **notwithstanding** that the Common Stock entitles existing stockholders and purchasers of New **Shares** to one vote for each share held. Accordingly, in our opinion, registration of the offer and sale of the New Shares is not required under Section 5 of the **Securities Act** and registration of the Common **Stock** is not **required** under Section **12(g)** of the Exchange **Act**.

In particular, **the fact that** Common Stock carries voting rights based upon the number of shares held does not alter the fundamental economic realities **associated** with the Proposed Offering or the Common **Stock**. It **remains** the **cast** that Common Stock, including the New Shares: (1) cannot receive dividends because of the prohibitions of the Proposed Articles; (2) is not negotiable or transferable (**except** to family members by gift or in the event of death or to the Company at a price less than the **issuance** price) **because** of the restrictions of the Proposed Bylaws; (3) cannot be pledged or hypothecated because of the prohibitions of **the** Proposed Bylaws; and (4) cannot appreciate in value (either through resale or transfer, or through liquidation or dissolution of the Company) because (a) upon liquidation or dissolution of the Company a holder of Common Stock is entitled to receive **nothing** and (b) there is no prospect for **profit** on **resale** or transfer in light of the sale and transfer restrictions **under** which the **only** alternative is a repurchase by the Company at a price that will be less than the **issuance price**. Accordingly, Common Stock **lacks** the **significant** economic characteristics of stock identified by **the** Supreme Court as being typically **associated** with stock.

Further, we believe neither **case** law nor prior no-action letters require that the Common Stock be considered a **security** because the holders of **Common** Stock are entitled to one vote per share. The Second Circuit **considered** this issue in Grenader v. Spitz and found there to be no **security**. 537 F.2d 612 (2d Cir.), cert. denied, 429 U.S. 1009 (1976). In Grenader, a **case** that involved the sale of stock in a housing cooperative, the **plaintiffs** argued that the shares of stock in question were securities **because** they differed **from** the stock examined in Forman in that, in Grenader, members did not all have equal numbers of votes because each member had one vote per share. The Grenader **court** found that this factor **was** not sufficient to **cause** the stock to fall within the definition of a security, noting that the number of shares owned by a member was **related** to the size and location of the apartment. 537 F.2d at 618.

Likewise, the Staff has issued several **no-action** letters relating to **cooperatives** whose members had one vote per share and held an **unequal** number of shares. See Producers Feed Company (July 30, 1990); Associated Grocers, Incorporated (February 12, 1988);

California Ammonia Co. (May 27, 1983). While the number of shares a stockholder of the Company owns is not related to the amount of business done with a cooperative, as **in** the above referenced no-action letters, these letters reflect that the Staff is willing to deviate **from** the **strict Forman** test when the economic realities are clear **that** a stock is not a security. **The** economic realities of the Common Stock are similar because the Common Stock cannot **receive** dividends, **cannot** appreciate in **value (either through** resale or transfer, or through liquidation or dissolution of the Company) and is subject to transfer restrictions.

Finally, the number of shares of **Common Stock outstanding, the maximum** number of shares an individual **can** own and **the restrictions on transfers** of Common Stock **make** it unlikely that anyone **will** seek to acquire Common Stock for the purpose of **accumulating** votes. For example, the voting rights that purchasers of New Shares would receive are relatively insignificant in light of **the shares** of **Common Stock** already outstanding. If **an** individual chooses to purchase **200** New Shares, the **maximum** number of New Shares that any individual can purchase, then the percentage of the outstanding Common Stock those shares could represent is at most 0.0043 %. **Assuming** the Company offers and sells 1,000,000 **New** Shares in the Proposed Offering, purchasers of **all** those shares will **collectively** hold only 17.8% of the outstanding Common Stock. Thus, it is unlikely any prospective purchaser in the Proposed Offering **will** be motivated in his or her purchase decision any differently whether the offered stock carries one vote per holder or one vote per share. Even as to the outstanding Common Stock, the restriction on share ownership effectively provides that no stockholder **may** own more than 4.3% of the **shares** now outstanding (3.5% **assuming** 1,000,000 New Shares are sold in the Proposed Offering), and the transfer **restrictions** applicable to Common Stock **make** it practically impossible for any stockholder to acquire additional Common Stock.

### **III. CONFIDENTIAL TREATMENT**

Because many of the facts surrounding the Proposed Offering have not yet been made public, we continue to respectfully request confidential treatment of the requests relating to the Proposed Offering and the Staff's response thereto until 120 days after the date of the **Staff's** response, or such earlier date as Staff is advised that all the **information** in the Initial **Letter** and this letter (and the Staff's response thereto) **has** been made public. As required by 17 **C.F.R.** Section 200.81(b), we have submitted a separate request, attached hereto, relating to confidential treatment of this letter.

### **IV. CONCLUSION**

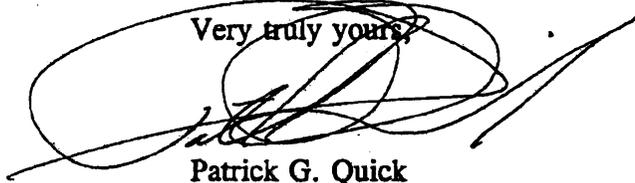
In view of the foregoing, it is our opinion that Common Stock is not a "**security**" within the meaning of Section 2(1) of the Securities Act and Section **3(a)(10)** of the Exchange Act. Accordingly, we **respectfully** request that the Staff confirm that it will not **recommend** any enforcement action to the Commission with respect to (1) the offer and sale of New Shares in

Securities and Exchange Commission  
July 8, 1997  
Page 5

the Proposed **Offering** by the Company without registration under Section 5 of the Securities **Act**; and **(2) the nonregistration** by the Company of Common **Stock** under Section 12(g) of the Exchange **Act**.

In compliance **with** Securities Act Release No. 6269 (December 5, 1980), seven additional copies of **this** letter are enclosed. If you have any questions or need additional information concerning the matters covered in **this** letter, please contact the undersigned at (414) 297-5678 or John Wilson at (414) 297-5642. If for any reason the Staff does not **concur** with our conclusions or **finds** itself unable **to** reach the "no-action" position requested hereby, we respectfully **request** a conference with the Staff before the Staff **issues** any adverse written **response** to **this** letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick G. Quick", is written over the typed name. The signature is somewhat stylized and overlaps the text below it.

Patrick G. Quick

cc: **Lance A. Lopes, Esq.**  
Green Bay Packers, **Inc.**  
Bernard S. Kubale  
John K. Wilson  
Foley & **Lardner**

# FOLEY & LARDNER

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WRITER'S DIRECT LINE

(414) 297-5678

June 16, 1997

**VIA HAND DELIVERY**  
**CONFIDENTIAL**

Office of Chief Counsel  
Division of Corporation **Fiance**  
**Securities** and Exchange Commission  
Judiciary Plaza  
450 **Fifth** Street, N.W.  
Washington, DC 20549

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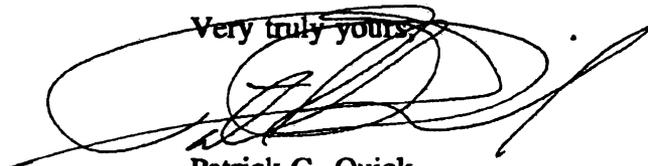
Re: Confidential Treatment of the Attached Request

Ladies and Gentlemen:

Because many of the facts surrounding the proposed offering of Special Stock described in the attached "no-action" letter request have not yet been made public, we respectfully request, pursuant to 17 C.F.R. Section 200.81(b), confidential treatment of the enclosed request and the Staff's response thereto until 120 days after the date of the Staff's response, or such earlier date as the Staff is advised that all information in the enclosed request (and the Staff's response thereto) has been made public.

If you have any questions concerning this request, please contact the undersigned at (414) 297-5678 or John Wilson at (414) 297-5642. In the event that, upon review of this request, the Staff is not inclined to grant our request for confidentiality, we ask that you so advise us immediately so that we may have an opportunity to address your concerns.

Very truly yours,



Patrick G. Quick

Enclosures

ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, PARIS, SINGAPORE, STUTTGART AND TAIPEI

Securities and Exchange Commission

June 16, 1997

Page 2

**cc: Lance A. Lopes, Esq.**  
**Green Bay Packers, Inc.**  
**Bernard S. Kubale**  
**John K. Wilson**  
**Foley & Lardner**

# FOLEY & LARDNER

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(414) 297-5678

June 16, 1997

Office of Chief Counsel  
Division of **Corporation Finance**  
Securities and Exchange Commission  
**Judiciary Plaza**  
450 Fifth Street, N.W.  
Washington, DC 20549

Re: **Green Bay Packers, Inc. - Proposed Stock Offering: Securities Act of 1933, Section 2(1); Securities Exchange Act of 1934, Section 3(a)(10)**

Ladies and Gentlemen:

We are acting as special counsel to the Green Bay Packers, Inc., a Wisconsin nonprofit stock corporation (the "Company"), in connection with a proposed offering to members of the public (the "Proposed Offering") of Stock Units (as defined below) representing fractional shares of the Company's Special Stock (as defined below). The purpose of this letter is to request on behalf of the Company that the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") confirm that it will not recommend any enforcement action to the Commission with respect to: (1) the offer and sale of Stock Units in the Proposed Offering by the Company without registration under Section 5 of the Securities Act of 1933 (the "Securities Act") and (2) the nonregistration by the Company of its Stock Units under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") (the Securities Act and the Exchange Act are collectively referred to herein as the "Acts").

It is our opinion that Stock Units, in the context and under the facts and circumstances as set forth herein, including the Amended and Re-Statement of Articles of Incorporation of the Company as such articles are proposed to be amended prior to the commencement of the Proposed Offering (the "Proposed Articles") and the Bylaws of the Company as such bylaws are proposed to be amended prior to the commencement of the Proposed Offering (the "Proposed Bylaws"), do not constitute a "security" within the meaning of that term as defined in Section 2(1) of the Securities Act or Section 3(a)(10) of the Exchange Act. Therefore, registration of the Stock Units is not required under Section 5 of the Securities Act or Section 12(g) of the

ESTABLISHED 1842

A MEMBER OF GLOBALEX WITH MEMBER OFFICES IN BERLIN, BRUSSELS, DRESDEN, FRANKFURT, LONDON, PARIS, SINGAPORE, STUTTGART AND TAIPEI

Exchange Act. Copies of the current forms of the Proposed Articles and Proposed Bylaws are enclosed as Exhibit A and Exhibit B, respectively.

## I. BACKGROUND AND FACTS

### A. Nonprofit History

The predecessor to the Company was organized in Green Bay, Wisconsin, as a Wisconsin nonprofit corporation in 1923. On January 26, 1935, the Company was organized as a Wisconsin nonprofit stock corporation. The Company's original articles of incorporation expressly stated that the Company was organized exclusively for a charitable purposes. Under the Amended and Re-Styled Articles of Incorporation of the Company as such articles exist as of the date of this letter (the "Existing Articles"), as well as under the Proposed Articles, the Company has the right to conduct athletic contests, operate a football team or such other similar projects for the purpose of carrying out its charitable purposes. At the time of its incorporation, the Company operated a National Football League ("NFL") franchise, the Green Bay Packers, and the Company continues to operate that franchise.

The Company's articles of incorporation in essence have always provided that (1) the Company is required to be non-profit sharing, (2) the Company is required to donate its profit to the Sullivan-Wallen Post No. 11 of the American Legion, which is located in Green Bay (the "Post"), but the Company may make contributions to the Community Chest or local charitable institutions proportional to other Green Bay institutions, (3) no stockholder may receive any dividend or pecuniary profit by virtue of being a stockholder in the Company and (4) in the event of a dissolution of the Company, the profits and assets of the Company must go to the Post for the purpose of erecting a proper soldier's memorial either by building, clubhouse, hospital or other charitable or educational program. The Existing Articles also provide (and the Proposed Articles will continue to provide) that the Company may create a capital reserve and therefore is not compelled to distribute all of its profits. (The Company is asking stockholders to consider a proposed amendment to the Existing Articles, which is reflected in the Proposed Articles, to designate the Green Bay Packers Foundation (the "Foundation"), rather than the Post, as the named beneficiary as to the Company's profit and upon its dissolution. The Foundation is a private foundation and a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), that the Company formed in 1987 to better manage the Company's contributions to charity.) Certificates representing shares of Common Stock refer to the Company's nonprofit status. Despite the Company's nonprofit status, the Company is not a charitable organization under Section 501(c)(3) of the Code, although the Company is an exempt organization for purposes of Wisconsin income taxes.

### B. Authorized and Outstanding Common Stock

The Company was originally authorized to issue 300 shares of common stock having no par value ("Common Stock"). In 1950, at a time when the Company was facing

financial **difficulties**, the Company's stockholders approved an amendment to the Company's articles of incorporation to authorize **the** Company to issue up to 10,000 **shares** of Common **Stock** for the purpose of facilitating an offering of the Common **Stock** to raise funds for the Company. **The** Company **offered** the shares of Common **Stock** at a price of \$25 per share. **The** Company completed that offering in 1950, as a result of which **approximately** 4,700 shares of Common **Stock** were outstanding. Currently, 4,628 shares of Common **Stock** are issued and outstanding. Under the bylaws of the Company as such bylaws exist as of the **date** of this letter (the "**Existing** Bylaws"), as well as under the Proposed Bylaws, a stockholder is prohibited from owning in excess of 200 shares of Common **Stock**.

The Company's nonprofit nature and public ownership **make** it unique among major **professional sports** franchises. Recent **comments** by President Clinton reflect a **commonly** expressed sentiment:

I **would** also **like** to say **something** not just as President, but as a **citizen**. In a world where professional athletics becomes, it seems, in sport **after** sport more and more transient, **where** players, quite properly, have to **look** out for **themselves** in what may be a relatively short life span **as** **professional** athletes, and people move **from** team to team and **then** teams **move** from **town** to **town**, the Green Bay Packers are **something** special, unique, old-fashioned and heartwarming.

The team is owned by ordinary citizens from **all walks** of life. The profits get poured **back into** the team. The players and the **coaches** have a unique **relationship** with the fans, which all of us **who** watch the games even **on** television can tell. **Whether** **the** fans **are** lining up in **the** winter to shovel snow so the **games** can be played, or the players are volunteering in the community, it really means something to the rest of the country to **see** the relationship **between** **Green** Bay and the **Packers** and to know that, **come** what may, it will be there next year and the **yea**. after that. . . . It's a **good** example that the rest of us should remember in **all** forms of human **contests** and endeavor.

Historically, the **Company's** articles of **incorporation** have **authorized** the Company's bylaws to provide regulations regarding transfers of the Company's stock. The Existing Bylaws prohibit a stockholder from transferring shares of Common **Stock** unless the stockholder first offers the **shares** to **the** Company's **Board** of **Directors** (the "Board") on behalf of the Company or **otherwise** obtains the **approval** of the Board. **The Existing** Bylaws also **allow** the Board to adopt regulations relating to the **transfer** of shares of the Company's stock. The Board has followed a **policy** that (1) no shares of the Company's stock may be sold, **assigned**, **pledged** or otherwise **transferred** to a third party, **except** that they may be transferred to a **member** of the holder's "immediate family" **by** gift or in the event of death, and (2) a stockholder must first offer shares of Common **Stock** to the Board on behalf of the Company at a price of \$25 per share before transferring such shares to a third party. In the past, the

Company has exercised this right to **acquire** shares of Common Stock at a price of \$25 per **share** rather than **allow a transfer** to a third party. The Proposed **ByLaws** formally confirm that **shares** of Common Stock may not be transferred to a third party and obligate the Company to **repurchase** Common Stock **at** \$25 per share if a stockholder **attempts** to improperly transfer Common Stock. **These restrictions** have as a **practical matter** had the effect of **making**, and will in the **future** make, it impossible for a **stockholder** of the Company to **transfer** shares of Common **Stock** to a **third** party other than an "immediate family" member. The "immediate family" means the **spouse**, child, mother, father, brothers and sisters, or any lineal descendant to a stockholder. Certificates representing **shares** of Common Stock **also** refer to the restrictions on the transfer of Common **Stock**.

### **C. special stock**

Assuming the Company's stockholders approve the Proposed Articles, the Proposed **Articles will** authorize the Company to **issue** (a) only 5,000 shares of Common **Stock** and (b) **5,000** shares of a **new** class of **stock**, designated "Special Stock," \$0.01 par value ("Special Stock"). **Under** the Proposed Articles, the rights of and restrictions upon holders of Common **Stock** and Special **Stock** would be **identical, except** that on matters submitted to a stockholder vote **the** holders of the outstanding shares of Common Stock and Special **Stock** will vote **together as** a single clam with (1) the holders of Common Stock entitled **to** one vote for each share **held** and (2) each holder of **Special** Stock, regardless of the number of shares or **fractions** of a **share** of Special Stock held, entitled to one one-ten thousandth vote.

### **D. Proposed Offering of Stock Units**

Also **assuming** the Company's stockholders approve the Proposed Articles, **the** Company **intends to pursue** the sale of **shares** of Special Stock to the public, subject to compliance **with** applicable law and the **rules** of the NFL, in the Proposed Offering.

#### **1. stock units**

The Company's intention is to **offer Special Stock for** sale in the form of units **representing** a one one-thousandth fraction of a **share** of Special Stock (a "Stock Unit"). **A** holder of Stock Units **will** be entitled to one one-ten thousandth vote, regardless of the number of **Stock** Units a person **may** hold. **As is the case** with holders of Common **Stock**, holders of Stock Units may not receive dividends or **pecuniary** profit by virtue of **being** a stockholder in the **Company**.  **Holders** of **Stock Units** will **receive** nothing in **the event** of dissolution or liquidation of the Company. Under the Proposed Bylaws, no prospective purchaser **will** be entitled to purchase more than 200 Stock Units.

**Stock** Units **will** also be subject to the same **restrictions** that apply to transfers of Common **Stock** as described above. Pursuant to the Proposed Bylaws, no **shares** of the Company's stock, including Stock Units, may be sold, assigned, pledged or otherwise

transferred to a third party, except that they may be transferred to a member of the holder's "immediate family" by gift or in the event of death. Furthermore, in the event a holder of Stock Units **attempts to** improperly transfer Stock Units, the Company is **required** to repurchase such a holder's Stock Units at \$25 per Stock **Unit**. As a practical **matter**, these restrictions make it impossible for a holder of Stock **Units** to transfer Stock **Units** to a **third party** other than an "immediate family" member. Such **restrictions** will be noted in conspicuous type on **all certificates representing Stock Units**. Because of the **restrictions on** transfers to third parties, there will be no **trading** market for Stock Units.

## 2 Proposed Offering

In recent years, several NFL **teams** have **moved** to cities that have built them new stadiums and practice facilities, and other **teams** have **threatened** to move if cities **do not** build them new stadiums. **Because** of these **moves** by other teams and the related **revenue increases** these teams then enjoy, the Company has fallen further behind the NFL's **top revenue-producing** teams. Because it is publicly **owned and** nonprofit, the Company does not have owners with large amounts of money that they could invest in the Company. Of course, the Company will not move. The Company has rejected alternative **revenue sources** such as selling personal seat **licenses** because it **does not** believe they are fair to its fans. Further, in contrast to **what** other teams are doing, since the early **1980s**, the Company has **invested** significant sums to improve **Lambeau** Field (the stadium in which the **Green Bay** Packers play home **games**) and the **Company's** administration building and to **construct** the Company's new training facility, the Don **Hutson Center**.

The Company, however, believes it does have one unique potential **source** of funds — the **opportunity** to sell additional **shares** of its capital stock. The Company also believes, based upon a history of requests **directed to** Company **representatives**, that a substantial number of people would be interested in **acquiring** stock of the **Company** to become part of the public ownership of the **team**, to support the community, nonprofit spirit the team **represents** and to have a voice in the Company's **governance**. Thus, the Company **believes** it **could** raise a meaningful amount of **capital** through an additional **offering** of stock.

The purposes of the Proposed Offering **are** to help ensure that the Company is solvent, remains competitive on the field and is always a member of the National Football League located in **Green Bay** and to attempt to satisfy the **perceived** demand to acquire an interest in **stock** of the Company. The Company intends to add **any proceeds from the Proposed Offering to** its general cash **reserves**. The Company may use such **reserves** for **player costs** or **other operating** expenses **and/or** for capital expenditures, such as **any investment** the Company may **make** in the **future** in connection with the replacement of **Lambeau** Field when such replacement **becomes** necessary. In any event, the proceeds from **the Proposed Offering** will not be **segregated** from the Company's other funds or otherwise set aside for any particular **purpose**.

The Board has not yet determined how **many** Stock Units will be offered to the public. In any event, the Company believes it is extremely likely that it will offer a number of Stock Units far less than the maximum potential of 5,000,000, with the unsold Stock Units to be issued periodically as the Board **determines**. Assuming the Company is able to obtain regulatory clearances for the Proposed **Offering** and requisite approvals of the Proposed **Articles** and the Proposed Bylaws, the Company intends to offer the Stock **Units** to the public as soon as practicable after it has done so. At such time, the Company will **offer** the Stock Units to the public for a limited period of time. The Board has also not yet **determined at** what price the Stock Units will be offered or sold, although the Board believes the final price per Stock Unit will be well in excess of the price of \$25 per Stock Unit at which the Company must repurchase Stock Units in the event of a proposed improper transfer of Stock **Units**. The Company intends to explore the potential market for the Stock Units before **making** any final **determination as** to the size and pricing of the Proposed Offering.

When the Company commences the Proposed Offering, the Company intends to advertise the offer of Stock **Units** through media that would constitute general solicitation, which may include without limitation television and radio commercials, newspaper advertisements, the Internet and mass mailings (the "Advertising"). Although the Advertising will identify Stock Units as stock of the Company, **all** Advertising will include a statement to the effect that Stock **Units** do not constitute an investment in "stock" in the common sense of the term, that offerees **should** not purchase Stock Units with the purpose of **making** a profit, that offerees and purchasers of Stock Units will not receive the protection of the federal or state securities laws with respect to the offering of Stock **Units** and that the Proposed Offering will only be made through **an** offering document, as described below, which the Company will make available to prospective **purchasers**.

The Company may engage advertising, marketing and other consultants and advisers with respect to the Proposed Offering to assist in determining the size, price and time of the Proposed Offering and to assist the Company with **the** Advertising. The Company recognizes that using investment banks, registered brokerdealers or firms otherwise involved in the securities **industry in** connection with the solicitation of prospective purchasers could be **confusing to the** public, in light of the non-investment **nature** of the Stock Units. Therefore, the Company will not **use** such **firms** in marketing Stock Units to the public or otherwise **associate** any such **firms** with the Proposed Offering in the **eyes** of the public generally or of prospective purchasers. No portion of the **compensation** that the Company will pay to such advertising, marketing **or** other **consultants** and advisers will be based on the number of Stock **Units** sold in the form of commissions or otherwise.

In response to the Advertising, prospective purchasers of Stock Units who request information will be sent a **formal** offering document (the "Offering Document"). Although the Offering Document will identify Stock Units as stock of the Company, the Offering Document, among other things, will emphasize that Stock Units do not constitute an investment in "stock"

in the common **sense** of the term, that **offerees** should not purchase Stock Units with the purpose of **making** a profit and that purchasers of Stock **Units will** not receive the protection of the federal or state securities laws with respect to the offering of Stock **Units**. The Offering Document will also discuss the transfer restrictions on **Stock Units**, the fact that Stock **Units** do not pay dividends and cannot **appreciate in** value and the limited voting rights of Stock Units. If **prospective** purchasers express an interest in **Stock Units**, they may communicate **with** **representatives** or **employees** of the Company to answer questions concerning the Company, Stock Units and **the Proposed Offering**. **There** will be no **commissions** or discounts or other forms of special remuneration paid to such representatives or employees, or any other party, in connection **with** the sale of Stock Units, other than such representatives' or employees' standard and usual **salaries**.

Although the Company **expects** to offer and **market Stock Units** to the general public, a prospective **purchaser will** not be induced to purchase Stock Units through any representation or promise of an expectation of profit or gain that might be realized **from** the monetary or resale value of such Stock Units. **All** prospective purchasers will be required to **sign** a subscription agreement (the "Subscription Agreement"), stating their motivation to support the continued viability of the Company as a community **resource** through **their** purchase of Stock Units, without expectation of any economic benefit beyond the availability of a professional **football** team in **Green Bay** and **the** opportunity to have a voice in its governance. The Subscription Agreement will **reference the** pertinent provisions of **the Proposed Articles** and the Proposed Bylaws.

The Company may **engage** third party agents to assist in essentially clerical **matters** relating to processing payments and documentation in connection with the purchase of Stock **Units**. Such **agents** will be involved solely in those processing functions and not in the sale of Stock **Units** and may be compensated based upon the number of items processed.

## II. STATEMENT OF ISSUE

Whether Stock Units constitute a "**security**" within the **scope** of the definition of that **term** in **Section 2(1)** of **the Securities Act** and **Section 3(a)(10)** of the **Exchange Act** in the context where: (1) the Proposed **Articles** prohibit the payment of dividends on Stock Units; (2) the Proposed Bylaws prohibit the sale or transfer of Stock **Units**, except by gift or in the **event** of death **to** family members, so that there will be no trading market in **Stock Units**; (3) Stock Units cannot be pledged or hypothecated under the Proposed Bylaws; (4) regardless of the **number** of Stock Units a **person may** hold, the holder is only entitled to one one-ten thousandth vote; and (5) Stock **Units cannot** appreciate in value because (a) upon liquidation or dissolution of the Company a holder of Stock **Units** is entitled to receive nothing **and** (b) there is no prospect for profit on resale or transfer in light of the sale and transfer restrictions under which the only alternative is a repurchase by the Company at a price that will be less than the **issuance** price.

### III. LEGAL OPINION

It is our opinion that **Stock Units**, in the context and under the **facts** and circumstances **set** forth in Section I above, do not **constitute** a "security" within the meaning of that term as defined in **Section 2(1)** of the Securities Act and **Section 3(a)(10)** of the Exchange Act. Accordingly, in our opinion, **registration** of the Stock Units is not required under Section 5 of the Securities **Act** or Section **12(g)** of the Exchange Act.

### IV. LEGAL DISCUSSION AND BASES FOR OPINION

#### A. **The Fact That an Instrument Bears the Label "Stock" Is Not Sufficient to Invoke Coverage of the Acts.**

"It is axiomatic that '[t]he starting point in every case involving construction of a statute is the language itself.'" Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985) (quoting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975)). While the definition of the term "security" under the Acts **does include** the words "ay . . . stock," the Supreme Court, in United States Housing Foundation, Inc. v. Forman, rejected the contention that the purchase of an **apartment** in a housing project **evidenced** by the sale of stock must be considered a securities transaction simply **because** of the statutory definition. 421 U.S. 837, 848 (1975).

Further, in Reves v. Ernst & Young, the Supreme Court emphasized that: (i) the purpose of the Acts is to regulate investments; (ii) legal formalisms are not **binding**, but courts should consider the economics of the transaction; (iii) form should be **disregarded** for substance; and (iv) the proper focus is on economic **reality**. 494 U.S. 56 (1990). **Accordingly**, "the **task has fallen** to the Securities and Exchange Commission, the body charged with **administering** the **Securities** Acts, and ultimately to the federal courts to decide which of the myriad financial transactions in our society **come** within the coverage of these **statutes**." Forman, 421 U.S. at 848. In interpreting the term "security," "form should be disregarded for substance and the emphasis should be on economic reality." Tcherepnin v. Knight, 389 U.S. 332, 336 (1967).

Finally, the Supreme Court has consistently held that the definition of a security in Section **3(a)(10)** of the Exchange Act "is virtually identical [to the definition in the Securities Act]." Reves, 494 U.S. at 61 n. 1. Accordingly, our discussion of the issue **and** our opinion **applies equally** to Section 3(a)(10) of the Exchange **Act as** it does to Section 5 of the **Securities** Act.

#### B. **Stock Units Have None of the Significant Characteristics Generally Associated with Stock.**

In determining whether a particular instrument is a "security," as the Supreme Court noted in Landreth, "we must . . . determine whether these instruments possess 'some of

the significant **characteristics** typically **associated** with' stock." 471 U.S. at 486 (**quoting Forman**, 421 U.S. at 851). In **Forman**, the Court identified these characteristics as (1) the right to receive dividends contingent upon an apportionment of profits; (2) negotiability; (3) the ability to be pledged or hypothecated; (4) the **conferring** of voting rights in proportion to the number of shares owned; and (5) the capacity to appreciate in value.

**Applying** these characteristics **to Stock Units** leads to the conclusion that **Stock Units** do not have the significant characteristics of a "security" as defined in the Acts. **As** noted **under** Section I above, **Stock Units**: (1) cannot pay dividends under the **Proposed** Articles; (2) are not negotiable or transferable (except to family members by gift or in the event of death or to the Company at a price less than the issuance **price**) under the **Proposed Bylaws**; (3) cannot be pledged or hypothecated **under** the **Proposed Bylaws**; (4) do not confer voting rights in proportion to the number of shares owned; and (5) cannot appreciate in value (either through resale or transfer, or through liquidation or dissolution of the Company). Accordingly, **Stock Units** lack **any** of the significant **characteristics** of stock identified by the **Supreme** Court as being typically **associated** with stock.

**C. As an Economic Reality, Stock Units Do Not Constitute an Investment Contract.**

**After concluding that** the stock **was** not a traditional security, the Supreme Court in **Forman** also reviewed the instruments to determine whether they were investment contracts under **SEC v. W.J. Howey**. In **Howey**, the Court **stated** that a transaction would **constitute an** "investment contract" **and** thus a **security** if, in economic reality, there **was** (1) an investment of money (2) in a common **enterprise** (3) that **was** premised on a reasonable expectation of **receiving** profits solely from the entrepreneurial or **managerial** efforts of others. 328 U.S. 293 (1946). The Court in **Forman** determined that the stock at issue **was** not **an** investment contract because there **were** no **profits**.

**As** in **Forman**, prospective purchasers of Stock Units cannot have a reasonable expectation of **receiving** profits from Stock Units. **As** discussed above, the **Proposed** Articles **prohibit** holders of **Stock Units** **from** receiving any dividend or pecuniary profit by virtue of being a stockholder in the Company. In the event of liquidation or dissolution of the Company, holders of **Stock Units** **receive** nothing. Finally, **because** of the transfer restrictions on **Stock Units**, it is **impossible** for a holder of **Stock Units** **to transfer** **Stock Units** **to** a third party, **and** therefore, such a holder could not receive profits **from** an appreciation in value of **Stock Units**, if any. **All of these facts** will be clearly **stated** in the Advertising and stated and discussed in the Offering Document and the Subscription Agreement. **Furthermore**, the Offering Document, the Advertising and the Subscription Agreement will **make** it clear to **prospective** purchasers that **Stock Units** are not an investment in "stock" in the **common** sense of the term, that purchasers should not purchase **Stock Units** with the purpose of making a profit and that purchasers of **Stock Units** will not receive the protection of the federal or state securities laws with respect to the offering and purchase of **Stock Units**. As a practical matter, it is difficult to imagine a person

who would pay more than the **issuance** price for **shares** of stock that do not have the right to receive dividends or profits of the Company.

**D. The Staff Has Given No-Action Letters in Similar Situations.**

Prior Staff no-action letters support our opinion that Stock Units are not a "security" within the definitional sections of the Acts. **See NBF Acquisition, Inc.** (April 1, 1997); **Professional Veterinary Products, Ltd.** (July 12, 1996); **Cap Rock Telephone Company, Inc.** (November 4, 1994); **Service Centers Corporation** (May 21, 1993); **Peer Marketing Associates** (February 3, 1993); **Marine Preservation Association** (September 16, 1991); **Producers Feed Company** (July 30, 1990); **Certified Physicians of Indiana, P.C.** (June 4, 1990); **Associated Grocers of New England, Inc.** (October 5, 1989); **NSD/BASIC, Inc.** (June 30, 1988); **Natural Gas Insurance Trust** (April 7, 1988). The Staff has issued a number of no-action letters involving instruments that **were essentially** membership interests represented or **evidenced** by a stock **certificate**. We believe, **from a securities law perspective**, Stock Units are akin to such **membership interests**. Stock Units do not **possess** the typical characteristics associated with a "security." The transferability of **Stock Units** is restricted. Holders of **Stock Units** cannot receive dividends and there is no potential **for** appreciation in value. **Finally**, each holder of **Stock Units** only has one **one-ten** thousandth vote, notwithstanding the number of shares the holder owns.

The **Staff's** no-action position in **Community Mercantile, Inc.** (April 21, 1992) is particularly relevant to the context and the facts involving **Stock Units**. In **Community Mercantile**, a cooperatively owned, "for profit" grocery store issued stock. Both members, who purchased stock, and **nonmembers** could **shop at** the store **and** purchase **items** for the **same** price. As **stated** in **Community Mercantile**, the only benefits to be received by purchasers of stock **was** the availability of the store's **unique products** and the **opportunity** to have a voice in its governance. The facts of **Community Mercantile** are similar to those **surrounding the** proposed offering of **Stock Units**. **Because transfers** of **Stock Units** are **restricted** and holders of **Stock Units** can receive no profits, the only benefits to be **received by a** prospective purchaser of **Stock Units** is the availability of a professional football team in **Green Bay** and the opportunity to have a voice in its **governance**.

**V. CONFIDENTIAL TREATMENT**

Because **many** of the facts surrounding the Proposed **Offering** have not **yet** been made public, **we respectfully** request confidential treatment of this request and the Staff's response thereto until 120 days after the **date** of the Staff's response, or such earlier **date** as Staff is advised that all the information in this **letter** (and the Staff's **response** thereto) has been made public. As required by 17 **C.F.R.** Section **200.81(b)**, we have submitted a separate request, attached hereto, relating to confidential treatment of this letter.

June 16, 1997

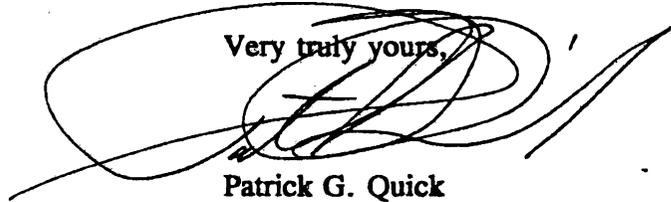
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**VI. CONCLUSION**

In view of the foregoing, it is our **opinion that Stock Units are not a "security"** within the **meaning** as defined in Section **2(1)** of the Securities Act and Section **3(a)(10)** of the Exchange Act. Accordingly, we **respectfully request** that the Staff confirm **that** it will not **recommend** any **enforcement** action to the Commission with **respect to** (1) the offer and sale of Stock Units in the **Proposed Offering** by the Company without registration under Section 5 of the Securities Act; and (2) the **nonregistration** by the Company of its **Stock Units** under Section **12(g)** of the Exchange Act.

In **compliance with** Securities Act Release No. 6269 (December 5, 1980), seven additional **copies** of this **letter** are enclosed. If you have **any** questions or need additional **information concerning** the matters **covered** in this **letter**, please **contact the undersigned at (414) 297-5678** or John Wilson at (414) 297-5642. If for **any reason** the Staff does not concur with our conclusions or finds itself **unable to reach the "no-action" position** requested **hereby**, we **respectfully request** a conference with the Staff before the Staff issues **any adverse** written **response** to this **letter**.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Patrick G. Quick', written over the typed name below. The signature is somewhat stylized and overlaps the text.

Patrick G. Quick

Enclosures

cc: Lance A. Lopes, Esq.  
Green Bay Packers, Inc.  
Bernard S. Kubale  
John K. Wilson  
Foley & Lardner



**EXHIBIT A**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**OF**  
**GREEN BAY PACKERS, INC.**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
GREEN BAY PACKERS, INC.**

Pursuant to Section 180.1007 of the Wisconsin Business Corporation Law, these Amended and Restated Articles of Incorporation shall supersede and **take** the place of the Corporation's heretofore existing Amended and **Restated** Articles of Incorporation **and all** amendments thereto.

**ARTICLE I**

The undersigned have associated **and** do hereby associate themselves **together** for the purpose of forming a **corporation** under Chapter 180 of the Wisconsin Statutes **and acts** amendatory thereof and supplemental thereto. **That** this association **shall** be a **community** project intended to promote **community welfare** and that **its** purposes shall be exclusively charitable and that incidental to **its** purposes, it shall have the **right** to conduct athletic contests, operate a **football team**, or such other similar projects for the purpose of carrying **out** its charitable purposes, which purposes shall be carried on within the **State** of Wisconsin, and **especially** within the County of Brown, in said **State**.

**ARTICLE II**

The **name** of the corporation **shall** be the **GREEN BAY PACKERS, INC.**, and its location shall be in the City of **Green Bay, Brown** County, Wisconsin.

**ARTICLE III**

A Authorized **Stock**. **The total** number of shares of all classes of capital stock **that said** corporation shall **have** the **authority** to issue **is** ten thousand (10,000) shares which **shall** be divided **into** two classes **as** follows:

**(1)** five **thousand** (5,000) shares of common stock having no par value ("Common Stock<sup>w</sup>"); and

(2) five thousand (5,000) shares of special stock having a par value of one cent (\$0.01) per share ("Special Stock").

B. The rights of and restrictions upon holders of Common Stock shall be identical to the rights of and restrictions upon holders of Special Stock except ~~that~~, on each matter submitted to a vote of the stockholders of the **corporation**, the holders of the outstanding shares of Common Stock and Special Stock shall **vote** together as a single class, but (i) the holders of Common **Stock** shall be entitled to one vote **for** each of the shares held by them of record at the time for determining holders thereof entitled to vote and (ii) each holder of record of Special Stock at the time for determining holders thereof entitled to vote, regardless of the number of shares (or one one-thousandths or other fractions of a share) of Special Stock held by such holder, shall be entitled to one one-ten thousandth vote. These articles of incorporation may be amended to **increase** the **aggregate** number of authorized shares of Special Stock without the approval of the holders of Special **Stock** as a separate voting group.

C. Preemptive Rights. Notwithstanding Section 180.1705 of the Wisconsin Business Corporation Law (or any successor provision to such section), (1) the holders of Common **Stock** shall not have a preemptive right to acquire unissued shares of Special **Stock**. The holders of Common **Stock** ~~shall~~ have a preemptive right to acquire authorized but unissued shares of Common Stock. If at any time the corporation acquires shares of Common **Stock** and as a **result** of such acquisition the corporation will hold more ~~than~~ 45 shares of Common Stock as treasury shares, then immediately upon such **acquisition** the Board of Directors of the corporation shall cancel the acquired shares to the extent of such thereby excess and restore such canceled **shares** to the status of authorized but unissued shares of Common **Stock**.

#### ARTICLE IV

The number of directors ~~constituting~~ the initial **board** of **directors** of the corporation is three (3) and thereafter the number of directors shall be **such number** (not less than three (3)) **as** is fixed **from** time to **time** by the **bylaws**. Said directors may be classified as authorized **from** time to time by the bylaws.

#### ARTICLE V

The **bylaws** may provide regulations for the person holding the stock, when such stock **may** be transferred, when the

**stock** may be redeemed and the conditions under which stock may be transferred and new **stockholders** admitted to the corporation. Notwithstanding the foregoing, the **stock is** redeemable at the option of the corporation at a **price** of \$25 per share of Common Stock and \$25 for one one-thousandth (1/1000) share of Special Stock only in the event the board determines **the stockholder can** not be located after the corporation **has** expended **reasonable** time and effort attempting to locate the stockholder.

## ARTICLE VI

The corporation shall be non-profit **sharing** and its purpose shall be exclusively for charitable **purposes** and that its profit shall be donated to the Green Bay Packers **Foundation**, but that the Green Bay Packers, Inc., can make contributions to any local charitable institutions; that no **stockholder** shall receive any dividend, pecuniary **profit** or emolument by virtue of **his being** a **stockholder**.

That should there be a dissolution of the Green Bay Packers, Inc., the players shall be subject to the National Football League Rules, **but** that **the** undivided **profits** and **assets** of the Green Bay Packers, Inc. shall go to the Green Bay Packers Foundation for distribution to **community programs**, charitable causes, and such other similar causes to which the Foundation deems appropriate.

## ARTICLE VII

The board of **directors** shall have **the** right to create a capital reserve to provide for the **acquisitions** and **maintenance** of its plant, equipment and players and **said funds** shall be preserved and no **distribution** made to **any** donee under the charitable **clause** of the Articles of Incorporation, except **when** in the judgment of the board of directors it shall be deemed advisable.

## ARTICLE VIII

**The** registered office of the Green Bay Packers, Inc. is 1265 **Lombardi** Avenue, Green Bay, **Brown County, Wisconsin**, and its **registered** agent is Phillip A. **Pionek** whose **address** is 1266 **Lombardi** Avenue, **Green Bay, Brown County, Wisconsin**.

## ARTICLE IX

These articles **may** be amended in the **manner** authorized by law.

## CERTIFICATION

The undersigned, the duly elected and acting \_\_\_\_\_ of The Green Bay Packers, Inc., a Wisconsin corporation, in accordance with Section 180.1007 of the Wisconsin Business Corporation Law, **DOES HEREBY CERTIFY THAT:**

1. The name of the corporation is Green Bay Packers, Inc.
2. The foregoing Amended and Restated Articles of Incorporation, **which** contain amendments to the corporation's articles of incorporation **requiring** shareholder approval, were adopted by **the corporation's** shareholders on **May 28, 1997**.
3. The foregoing Amended and Restated Articles of Incorporation were submitted to the corporation's shareholders by the Board of **Directors of the** corporation and were adopted by such shareholders in accordance **with** Section 180.1003 of the **Wisconsin** Business Corporation law.
4. The foregoing Amended and Restated **Articles of** Incorporation do not provide for an exchange, **reclassification** or cancellation of issued shares.

**IN WITNESS WHEREOF**, the undersigned has executed and subscribed these Amended and Restated Articles of Incorporation on behalf of the corporation and does **affirm** the foregoing as **true this** \_\_\_\_ day of \_\_\_\_\_, **1997**.

**GREEN BAY PACKERS, INC.**

**By:** \_\_\_\_\_

Robert E. ~~Harlan~~, President

**By:** \_\_\_\_\_

Peter M. Platten III, **Secretary**

**EXHIBIT B**

**BYLAWS OF  
THE GREEN BAY PACKERS, INC.**

**BYLAWS OF  
THE GREEN BAY PACKERS, INC.**

**ARTICLE I  
OFFICE**

The principal office of the corporation shall be the City of **Green Bay**, County of **Brown**, **State** of Wisconsin. The **corporation** may have **such** other offices, **either** within ~~or~~ without the **State** of Wisconsin, **as** the **Board of Directors** **may** designate or **as** the **business** of the corporation may **require** from time to time.

The **registered** office of the corporation **required** by the Wisconsin Business Corporation **Law** to be maintained in the **State** of Wisconsin **may** be, but **need** not be, identical with the principal **office** in the **State** of Wisconsin, and the **address** of the registered **office** may be **changed** from time to time by the **Board of Directors**.

**ARTICLE II  
STOCKHOLDERS**

**Section 1. Annual Meeting.** The **annual meeting** of the stockholders shall be held ~~at~~ a time to be **designated** by the President; provided, **however**, that **said** annual **meeting** shall not be held prior to the first Monday in **March** or not **later** than the last Monday in June of **any year** and if not called by the President prior to that **time**, **said** annual **meeting** shall be held on the first Monday in July. **On** the day **immediately** following the last **Monday** in June, in **case such annual** meeting not be held, the **Secretary** then shall notify the stockholders in **accordance** with **Article II, Section 4**. **Said annual meeting**, however called, shall be for the purpose of electing directors and for the transaction of **such other business as may come before** the meeting. If the day **fixed** for the annual meeting shall be a legal holiday in the **State** of **Wisconsin**, such meeting shall be held on the **next** succeeding **business day**.

**Section 2. Special Meetings.** **Special meetings** of the stockholders, for **any purpose or purposes**, unless otherwise **prescribed by statute**, may be called by the

President or the **Board of Directors**, and shall be called by the President **at** the request of the holders of ~~not~~ less than one-third of **all** the outstanding **shares** of the corporation entitled to **vote** at the meeting.

**Section 3. Place of Meetings.** The **President** may designate the place of meeting for an **annual meeting**, or for a special meeting **called** by the President. The Board of Directors may **designate the** place **for** an **annual** or **special meeting called** by them.

**Section 4. Notice of Meeting.** Notice of **the meeting** stating the place, day and hour of the meeting and, in **case** of a **special** meeting, in **addition** the purpose or purposes for which **the meeting** is called, shall be delivered not less than ten (10) days (~~unless~~ a longer period is ~~required~~ by law) **nor more than sixty** (60) days before the date of the meeting, **either** personally or by mail, by or at the direction of the President, or the persons calling the meeting, to each stockholder of **record** entitled to **vote at** such **meeting**. If **mailed**, such notice shall be deemed to be delivered when deposited in the United **States mail**, addressed to the stockholder at his address as it appears on the stock record **books** of **the** corporation, with postage ~~thereon~~ prepaid.

**Section 5. Closing of Transfer Books or Fixing of Record Date.** For the purpose of **determining** stockholders **entitled** to notice of or to **vote at** any **meeting** of stockholders or any **adjournment thereof**, or in order to **make** a determination of stockholders for any other **proper** purpose, the **Board** of Directors of **the corporation** may **provide** that **the stock transfer books** shall be closed for a period not to exceed, in any **case**, fifty (50) days. If the stock **transfer books** shall be closed for **the** purpose of **determining stockholders** entitled to notice of or to vote at a meeting of **stockholders**, such **books** shall **be closed** for ~~at~~ least ten (10) days immediately preceding such meeting. In lieu of closing the stock **transfer books**, the Board of Directors may fix in advance a **date** as the record **date** for any such **determination** of **stockholders**, such **date** in any **case to be** not more than fifty (50) days **and**, in **case** of a **meeting of stockholders**, not less than **ten** (10) days prior to the **date** on which the particular action, requiring such determination of stockholders, is to be **taken**. If the stock transfer **books** are not closed and no record **date** is fixed for the determination of stockholders entitled to notice or to **vote** at a meeting of **stockholders**, the close of

business on the date on which notice of the **meeting** is mailed, shall be the record **date** for such **determination** of stockholders. When a **determination** of stockholders **entitled** to vote at any **meeting** of stockholders has **been** made as provided in this **section**, such **determination** shall be **applied** to any **adjournment** thereof except where the **determination** has **been made through** the closing of the **stock transfer books** and the stated period of closing **has expired**.

**Section 6. Voting Lists.** The officer or **agent** having charge of the **stock transfer books** for **shares** of the **corporation** shall **make**, at least five days before each meeting of **stockholders**, a complete list of the stockholders entitled to vote at such meeting, or any adjournment thereof, **arranged** in alphabetical order, with the address of and the number of shares held by each, which list, for a period of five days prior to such meeting, **shall be kept on file** at the registered office of the corporation and shall be subject to inspection by any **stockholder** at any time during usual business hours. Such list **shall** also be produced and kept **open** at the time and place of the **meeting** and shall be subject to the **inspection** of any stockholder **during** the whole **time** of the meeting. The original **stock transfer books** shall be **prima facie evidence** as to who are the stockholders entitled to examine such list or transfer **books** or to vote at any meeting of stockholders. Failure to comply with **the** requirements of this **section** shall not affect the validity of any action **taken** at such **meeting**.

**Section 7. Quorum.** **Shares** entitled to vote as a **separate** voting group may take **action** on a **matter** at any **meeting** of stockholders **only** if a quorum of **those shares exists with** respect to that matter. If the **corporation** has only one class of **stock** outstanding, **then** such class shall **constitute** a **separate** voting group for purposes of this section. Except **as** otherwise **provided** in the articles of incorporation, these **bylaws** or the Wisconsin Business **Corporation Law**, a majority of the votes entitled to be **cast** on a **matter** shall constitute a quorum of the voting group for action on that matter. If a quorum exists, except in the **case of** the election of **directors**, **then** action on a **matter** shall be approved if the votes cast within the voting **group favoring** the action **exceed** the votes **cast** opposing the action, **unless** the articles of incorporation, these bylaws or the Wisconsin Business Corporation Law **requires** a greater affirmative number of **votes**. **Unless** otherwise provided in the articles of incorporation, directors

are elected by a plurality of the votes cast by the shares entitled to vote in the election of directors at any meeting of stockholders at which a quorum is present.

**Section 8. Proxies.** At all meetings of the stockholders, a stockholder entitled to vote may vote by proxy appointed in writing by the stockholder or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. No proxy shall be valid after ninety (90) days from the date of its execution, unless otherwise provided in the proxy.

**Section 9. Voting of Shares.** Each outstanding share, regardless of class, shall be entitled to one vote upon each matter submitted to a vote at a meeting of stockholders, except to the extent that the voting rights of the shares of any class or classes are enlarged, limited or denied by the articles of incorporation or by the Wisconsin Business Corporation Law.

**Section 10. Voting of Shares by Certain Holders.** Shares standing in the name of another corporation may be voted by the president of such corporation, or any other officer or proxy appointed by such president, in the absence of express notice to this corporation, given in writing, to the Secretary, of the designation of some other person by the Board of Directors or by Bylaws of such other corporation.

Shares held by an administrator, personal representative, guardian, conservator, trustee in bankruptcy, receiver, or assignee for creditors may be voted by him, either in person or by proxy, without a transfer of such shares into his name, provided that then is filed with the Secretary before or at the time of meeting proper evidence of his incumbency and the number of shares held. Shares standing in the name of a fiduciary may be voted by him, either in person or by proxy. Shares standing in the name of a partnership may be voted by any one of the partners.

**Section 11. Waiver of Notice by Stockholders.** Whenever any notice whatever is required to be given to any stockholder of the corporation under the Articles of Incorporation or Bylaws or any provision of law, a waiver thereof in writing, signed at any time, whether before or after the time of meeting, by the stockholder entitled to such notice, shall be deemed equivalent to the giving of such notice; provided that such waiver in respect to any matter of which notice is required under any provision of Chapter 180, Wisconsin Statutes, shall contain the same

information as would have been required to be included in such notice, except the time and place of ~~meeting~~.

**Section 12. Informal Action by Stockholders.** Any action required or permitted by the Articles of Incorporation or Bylaws or any provision of law to be ~~taken~~ at a ~~meeting~~ of the stockholders, ~~may be taken~~ without a ~~meeting~~ if a consent in ~~writing~~, ~~setting~~ forth the action so ~~taken~~, shall be signed by all of the ~~stockholders~~ entitled to vote with respect to the subject matter thereof.

### **ARTICLE III**

#### ***BOARD OF DIRECTORS***

**Section 1. General Powers.** ~~The business~~ and affairs of the corporation shall be ~~managed~~ by its Board of Directors.

**Section 2. Number, Tenure and Qualifications.** The Board of Directors shall ~~consist~~ of not ~~less~~ than forty-five (45) members to be selected from and by the ~~stockholders~~, not less than five (5) to have residence ~~outside~~ the County of ~~Brown~~, nor more than fifteen (15).

The ~~Directors~~ shall be classified with regard to the time for which they shall severally hold office by ~~dividing~~ them ~~into~~ three (3) ~~classes~~, each consisting of ~~one-~~third of the whole number of ~~the~~ Board of ~~Directors~~, and all Directors of the corporation shall hold office until their ~~successors~~ are elected and ~~qualified~~.

In addition, ~~there~~ shall be a class of Directors emeritus (non-voting) to consist of ~~those~~ directors ~~who~~ no longer qualify as active Directors. Selection of ~~this~~ class shall be ~~made~~ in the discretion of the Board of ~~Directors~~.

At the ~~meeting~~ held for the election of the first board, the ~~Directors~~ of the first class shall be ~~elected~~ for one (1) year; the Directors of the ~~second~~ class for a term of two (2) years; and the Directors of the third class for a term of three (3) years; and at each annual election the ~~successors~~ to the classes of Directors ~~whose~~ terms shall expire that year shall be elected to hold office for the term of three (3) years, so that each term of office of one class of Directors shall expire in each year.

No member shall hold office as Director beyond the annual meeting following his 70th birthday; provided, however, that this paragraph shall not be applicable to any

Director elected and serving as a Director on **April 19, 1976.**

A Director who shall **miss** four (4) consecutive regular meetings shall be **deemed** to have resigned, and his **place will be filled in** accordance **with** the Bylaws.

**Section 3. Regular Meetings.** The regular ~~l~~ **eti** of the **ard** of Directors shall be held at a **time** designated by the President, but no later than **fifteen** (15) days following the regular annual meeting of the stockholders. Notice of said meeting and the place of said **meeting shall** be given by the **Secretary. Directors** shall be notified not **less** than five **(5)** days **prior** to such **meeting.**

**There shall be four** (4) regular meetings of **the** Board of **Directors** (the term "four (4) **regular meetings**" shall include the **annual Directors'** meeting) in **each** calendar year, to be held at such time as shall be **selected** by the Board of **Directors.** Notice of such regular meetings (with the exception of the annual meeting) as to time and place shall be given by the **Secretary** of the corporation to each **Director** not less than thirty (30) days prior to **such** meeting. All notices under this section shall be by delivery of a letter, in **person** or by post, to the last **known** address of the Director, or by telephone or facsimile.

**Section 4. Special Meetings.** Special meetings of the **Board of Directors** **may** be called by or at the request of the President or any fifteen (15) **Directors.** The person or **persons authorized** to call special **meetings** of **the** Board of Directors may **fix** any place as **the** place for holding any **special meeting** of **the** Board of Directors called by them.

**Section 5. Notice.** **Notice** of any **special** meeting **shall** be given **at least** forty-eight (48) hours **previously thereto** by written notice **delivered** personally or mailed to each Director at his business address or a **facsimile** sent to his business address. If mailed, such **notice** shall be deemed to **be delivered** when deposited in the **United States mail so addressed, with postage** thereon prepaid. If notice be given by **facsimile**, such notice shall be deemed to be delivered **when** the facsimile is sent by the **corporation.** Whenever any notice **whatever** is required to be given to any **Director** of the corporation under the Articles of Incorporation or Bylaws, or **any** provision of law, a waiver thereof in writing, signed at any time, whether before or after the time of **meeting,** by the Director entitled to such notice, shall be **deemed** equivalent to the

giving of **such** notice. **The** attendance of a Director at a meeting **shall** constitute a waiver of notice of such meeting, except where a Director attends a meeting and **objects** thereat to the transaction of **any business because** the meeting is not lawfully called or convened. Neither the business **to** be transacted at, nor the purpose of, **any** regular or special meeting of the Board of **Directors** need be specified in the notice or waiver of notice of such meeting.

**Section 6. Quorum.** Except as otherwise provided by law or by the **Articles** of Incorporation or these Bylaws, a **majority** of the number of **Directors** fixed pursuant to Section 2 of this Article III shall **constitute** a quorum for the transaction of **business at** any meeting of the Board of **Directors**, but a majority of the Directors present (though **less** than such **quorum**) may adjourn **the** meeting **from** time to time without further notice.

**Section 7. Manner of Acting.** The act of the majority of the Directors present at a meeting at which a **quorum** is present shall be the act of **the** Board of **Directors, unless** the act of a greater number is required by **law** or by the Articles of Incorporation or these Bylaws.

**Section 8. Vacancies.** Any **vacancy occurring** in the Board of **Directors,** including a vacancy **created** by an **increase** in the number of directors, may, but need not, be filled before the **next** succeeding annual election **by** the affirmative vote of a majority of the **Directors** then in office, though less than a quorum of the **Board of Directors**

If a **vacancy** in the Board of **Directors** is to be filled before the **next** succeeding annual election, a nominating **committee** shall be **appointed** in the **same manner** as in Article VII and its **nominations voted on at** the **next** regular or **special** meeting of the Board of **Directors**; provided, however, that a vacancy in the **Executive** Committee of a **non-officer shall be filled** by the Board of **Directors** within **sixty (60)** days of the **vacancy, the vacancy to be filled** by the usual procedure of the President's nominating committee.

Notwithstanding the foregoing, only the holders of shares of the voting group of shareholders that elected the director who held the vacant **office** may vote to fill the

vacancy if it is filled by ~~the~~ shareholders, and only the remaining directors elected by that voting ~~group~~ may vote to fill ~~the~~ vacancy if it is filled by ~~the~~ directors.

**Section 9. Presumption of Assent.** A Director of ~~the~~ corporation who is ~~present~~ at a meeting of the Board of ~~Directors~~ or a committee thereof at ~~which~~ action on any ~~corporate~~ matter is ~~taken~~ shall be presumed to ~~have assented to~~ the action ~~taken~~ ~~unless~~ his dissent shall be entered ~~into~~ the minutes of the ~~meeting~~. Such right to dissent ~~shall~~ not apply to a ~~Director who~~ voted in favor of such action.

**Section 10. Committees.** The Board of ~~Directors~~ shall ~~create~~ an Executive Committee, consisting of seven (7) ~~members~~, provided, however, that the President, Vice-President, Secretary and ~~Treasures~~ must be members of said Executive ~~Committee~~, and the balance thereof shall be chosen ~~from~~ the Board of ~~Directors~~. Said Executive Committee shall have and may ~~exercise~~, when ~~the~~ Board of ~~Directors~~ is not in session, the ~~powers of the~~ Board of ~~Directors~~ in ~~the~~ management of the business and ~~affairs of the corporation~~, except ~~action~~ in respect to the declaration of dividends,<sup>1</sup> maximum number of ~~shares that~~ can be owned by one (1) stockholder, any ~~change~~ in stock ~~transfer restrictions~~, election of ~~the~~ principal officers or the filling of vacancies in ~~the~~ Board of ~~Directors~~ or ~~committees created~~ pursuant to ~~the~~ authority ~~granted in~~ this section.

If a vacancy occurs in the Executive Committee, a nominating committee ~~shall~~ be appointed in the same ~~manner~~ as in ~~Article VII~~ and ~~its~~ nomination ~~voted~~ on at the next regular or special meeting of the Board.

**Section 11. Informal Action Without Meeting.** Any action required or ~~permitted~~ by the Articles of ~~Incorporation~~ or Bylaws or any provision of law to be taken by ~~the~~ Board of ~~Directors~~ at a meeting or by resolution may ~~be~~ taken without a meeting if a consent in writing, setting forth ~~the~~ action so taken, shall be signed by all of the ~~Directors~~ then in office.

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<sup>1</sup>The phrase "except action in respect to the declaration of dividends" is included to comply with the Statute, but it is understood that the corporation ~~does~~ not have authority to declare dividends.

**ARTICLE IV**  
**OFFICERS**

**Section 1. Number.** The principal officers of the corporation shall be a **President**, a **Vice-President**, a **Secretary** and a Treasurer, each of whom shall be elected by the Board of **Directors**, chosen from the **Directors**. Such other officers and assistant **officers as** may be deemed necessary **may** be **elected** or appointed by the Board of Directors. Any two (2) or **more** offices may be held by the same **person**, **except** the offices of President and **Secretary** and the offices of President and **Vice-President**.

No **officer** or assistant officer **or** member of the executive **committee shall** hold office beyond the annual meeting immediately following his 70th birthday; provided, however, **that** this limitation shall not be applicable to any person holding office on the 1st day of October, 1979.

**Section 2. Election and Term of Office.** The **officers** of the **corporation** shall be elected annually at the first **meeting** of the **Board** of **Directors** held after each annual **meeting** of the stockholders. If the **election** of officers cannot be held at such **meeting**, such election shall be held as **soon** thereafter as conveniently may be. Each officer shall hold **office until** his successor shall have been **duly elected or until** his death or **until** he shall **resign** or shall **have been** removed in the **manner hereinafter provided**.

**Section 3. Removal.** Any officer or **agent** elected or appointed by the Board of **Directors** may be **removed** by the Board of **Directors whenever** in its judgment the best **interests of the corporation** will be served thereby, but such **removal shall** be without **prejudice** to the contract rights, if **any**, of the **person** so removed. **Election** or appointment shall **not** of itself **create contract** rights.

**Section 4. Vacancies.** ~~When~~ a **vacancy** occurs in any principal office, a nominating **committee** shall be appointed in the **same** manner as in Article **VII** and its **nominations voted** on within **sixty (60)** days of the vacancy at the next regular or special meeting of **the Board**.

**Section 5. President.** The President shall be the principal executive officer of the corporation and, subject to the **control** of the Board of Directors, shall in

**general supervise** and control all of the business and affairs of the corporation. He shall, when **present**, **preside** at all meetings of the stockholders and of the Board of **Directors**. He shall have authority, subject to such rules as **may** be prescribed by the Board of Directors, **to appoint and** remove such **agents and** employees of the **corporation** as he shall **deem** necessary, to **prescribe** their **powers**, duties and **compensation**, and to delegate authority to them. He shall have authority to **sign**, **execute** and acknowledge, on behalf of the **corporation**, all deeds, **mortgages**, bonds, **stock certificates**, contracts, leases, reports and all other documents or instruments necessary or proper to be **executed** in the course of the corporation's regular business, or which shall be authorized by resolution of the Board of **Directors**; and, except as **otherwise** provided by law or the **Board** of Directors, he **may** authorize any **Vice-President** or other officer **or** agent of the corporation to sign, execute and acknowledge such documents or instruments in his place and **stead**. In **general**, he **shall perform all** duties incident to the **office of** President and such other duties as may be **prescribed** by the Board of **Directors** from time to time.

**Section 6. The Vice-President.** In the absence of the **President** or in the event of his death, inability or **refusal** to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the **powers** of and be subject to **all the restrictions** upon the **President**. The **Vice-President** may **sign**, with the **Secretary** or Assistant **Secretary**, certificates for shares of **the** corporation; and shall perform such other duties and **have such** authority as from time to time **may** be assigned to him by the President or by the Board of **Directors**.

**Section 7. The Secretary.** The **Secretary** shall: (a) ~~keep~~ the **minutes** of the stockholders, of the Board of Directors, **and** of the **Executive** Committee meetings in one **or** more **books** provided for that purpose; (b) ~~see~~ that all **notices** are duly **given** in **accordance** with the provisions of these Bylaws **or** as required by law, and **specifically** the **Secretary** shall give notice of meetings when requested to do so by a person or **persons** authorized to call meetings under Article II, Sections 1 and 2 and Article III, Section 4; (c) be custodian of the **corporate** records and of the seal of the corporation and ~~see~~ that the seal of the corporation is **affixed** to **all** documents **and** execution of which on behalf of the **corporation** under its ~~seal~~ is duly authorized; (d)

keep a register of the post office **address** of each stockholder, (e) **sign** with the President or a **Vice-President**, **certificates** for stocks of the **corporation**, the issuance of which **shall** have been authorized by resolution of the Board of Directors; (f) have **general** charge of the **stock transfer books** of the **corporation**; and (g) in general, perform all duties and **exercise** such authority as **from** time to time **may** be delegated or **assigned** to him by the **President** or by the **Board** of Directors.

**Section 8. The Treasurer.** If **required** by the Board of **Directors**, the **Treasurer** shall **give** a bond for the faithful discharge of his duties in such sum and with such **surety** or sureties as the Board of **Directors** shall determine. He shall (a) have charge and custody of and be responsible for all **assets**, funds and investments of the **corporation**; **receive** and give receipts for **moneys** due and payable to the corporation **from any source whatsoever**, and deposit and invest **all** such moneys in the name of the corporation in such **banks**, trust companies or other depositaries **as** shall **be selected** in accordance with the provisions of Article V of these **Bylaws**; and (b) in general, perform **all** of the duties incident to the office of **Treasurer** and have such other duties and **exercise** such other authority as **from** time to time **may** be delegated or assigned to him by the President or by the **Board** of Directors.

**Section 9. Assistant Secretaries and Assistant Treasurers.** There shall be such number of Assistant **Secretaries** and Assistant Treasurers **as** the Board of Directors **may from** time to time authorize. **The** Assistant Secretaries **may sign** with the **President** or a **Vice-President** certificates for shares of the corporation the issuance of which shall have been authorized by a resolution of the **Board** of Directors. **The** Assistant **Treasurers** shall **respectively**, if required by the **Board** of **Directors**, give **bonds** for the faithful **discharge** of **their** duties in such sums and **with** such sureties as **the Board of Directors** shall determine. The Assistant Secretaries and Assistant **Treasurers**, in **general**, shall perform such duties and **have such** authority as shall from time to time be delegated or **assigned** to them by the Secretary **or** the **Treasurer**, **respectively**, or by the President or the Board of Directors.

**Section 10. Other Assistants and Acting Officers.** The Board of Directors shall have the power to appoint **any** person to act **as** assistant to **any officer**, or to **perform** the duties of such **officer** whenever for any reason it is impracticable for

such officer to act personally, and such assistant or acting officer so appointed by the Board of **Directors** shall have **the** power to perform **all the** duties of **the** office to which he is so appointed to be assistant, or as to which he is so **appointed** to act, except as such **power** may be otherwise **defined** or restricted by **the** Board of **Directors**.

**Section 11. Indemnity of Officers and Directors.** (1) Every person who is or **was a Director** or officer of the corporation, (2) any **person** who may have **served** at its request **as** a director or officer of another corporation, and (3) **any** employee or **former** employee who **presently serves** or who **has** served as a fiduciary or a **member** of **the committee** of **any** investments, pension **and/or** profit-sharing **retirement** trusts or any employee benefit plan of the **corporation**, shall (together with the heirs, personal representatives **and** administrators of such person) be indemnified by **the** corporation against **all** costs, **damages** and **expenses asserted** against, **incurred** by **or imposed** upon him in **connection** with or resulting **from** any claim, action, suit or proceeding, including criminal proceedings, **to** which **he is made** or threatened **to be made a party** by **reason** of his being or having **been** such **director**, officer, fiduciary or member of the **committee**, **unless** liability **was incurred** because the **person** breached or failed to **perform** a duty that he owed to **the** corporation and **the** breach **or** failure to **perform** **constitutes** any of **the** following: (a) a wilful **failure** to deal **fairly** with the corporation or **its shareholders** in connection **with** a **matter in** which the director or **officer has** a material conflict of **interest**; (b) a violation of the criminal law, **unless the** director **or** **officer** has **reasonable cause** to **believe** that his or her **conduct was** lawful or no **reasonable cause** to believe **that** his or her **conduct was** unlawful; (c) a transaction **from** which the director or **officer** derived an improper **personal** profit; (d) wilful misconduct.

**Determination** of whether indemnification is required under this subsection shall **be made** by a **majority** vote of a quorum of the **Board** of **Directors** **consisting** of **Directors who** are not at **the** time **parties to** the **same** or related **proceedings**. If a quorum of disinterested **Directors** cannot **be** obtained, by majority vote of a **committee** duly appointed by the Board of **Directors** and consisting solely of two (2) or more **Directors who** are not at the time **parties to** **the same** or related proceedings. **Directors**

who are parties to the same or related **proceedings** may participate in the designation of **members** of the committee.

**This** indemnity shall include reimbursement of amounts and expenses incurred **and paid in settling** any such claim, action, suit or proceeding **including** without limitation attorneys' fees **reasonably incurred** by him in connection **therewith**. The **corporation**, by its **Board** of Directors, may **indemnify** in **like manner**, or with any limitations, any employee or **former** employee of the corporation with respect to any action taken or not taken in his capacity **as** such employee.

The foregoing rights of **indemnification** shall be in addition to **all** rights to which officers, **Directors** or **employees** may be **entitled** as a matter of **law**.

## **ARTICLE V**

### ***CONTRACTS, LOANS, CHECKS AND DEPOSITS***

**Section 1.** **Contracts.** The Board of **Directors** may authorize any officer or officers, agent or agents, to enter into **any contract** or execute and deliver any instrument in the **name** of and on behalf of the **corporation**, and such authorization may be general or **confined** to specific **instances**.

**Section 2.** **Loans.** No loans shall be **contracted** on behalf of the corporation and no **evidences** of indebtedness shall **be issued in its name unless** authorized by **or** under the **authority** of a resolution of the Board of **Directors**. Such authorization may be general **or confined to specific instances**.

**Section 3.** ***Checks,*** All checks, **drafts** or other **orders** for the payment of money, notes **or** other **evidences** of indebtedness **issued** in the name of the **corporation**, shall be signed by such officer or **officers, agent** or agents of the **corporation** and in such **manner** as shall **from** time to time be **determined** by **or** under the authority of a **resolution** of the Board of **Directors**.

**Section 4.** **Deposits.** All funds of the **corporation** not otherwise employed or invested shall be deposited **from** time to time to the credit of the corporation in such banks, trust companies or other depositories **as** may be selected by or under the authority of the Board of Directors.

## ARTICLE VI

### ***CERTIFICATES FOR SHARES AND THEIR TRANSFERS***

**Section 1. Certificates for Shares.** Certificates representing shares of the corporation shall be in such form as shall be determined by the Board of Directors. Such certificates shall be signed by the President or a Vice-President and by the Secretary or an Assistant Secretary. Any or all of the signatures on a certificate representing shares of the corporation may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue. All certificates for shares shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. All certificates surrendered to the corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificates for a like number of shares shall have been surrendered and cancelled, except that in case of a lost, destroyed or mutilated certificate, a new one may be issued therefore, upon such terms and indemnity to the corporation as the Board of Directors may prescribe.

**Section 2. Transfer of Shares.** Transfer of shares of the corporation shall be made only on the stock transfer books of the corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes. The corporation may maintain one or more transfer agencies and/or registry offices appointed by the Board of Directors where shares of the corporation may be transferable and/or registered.

**Section 3, Stock Regulations.** In addition to the restrictions set forth in Sections 4 and 5 of this Article VI, the Board of Directors shall have the power and authority to make **all** such further **rules** and regulations not **inconsistent** with the statutes of the **State** of Wisconsin as they may deem expedient concerning the issue, transfer, redemption and **registration** of **certificates** representing **shares** of the **corporation**.

**Section 4. Restriction on Stock Transfers.** No holder of shares of Common Stock or units **representing** a one-one thousandth fraction of a share of Special Stock ("**Stock Units**") **may** sell, **pledge**, encumber or otherwise transfer or **dispose** of, in any **manner**, either voluntarily or involuntarily, any **shares** of Common Stock or **Stock Units (collectively, a "Transfer")**, **except** in accordance with and subject to this **Section 4**. A **holder** of shares of Common Stock or **Stock Units** may only transfer such shares of Common Stock or **Stock Units** to a member of the holder's "**immediate family**" by gift or in the **event** of death of the holder. The term "**immediate family**" means the **spouse**, child, mother, father, brothers and **sisters**, or any lineal descendant of a **stockholder**.

If a **holder** of shares of Common Stock or **Stock Units** intends to **make** a bona fide voluntary Transfer of **shares** of Common Stock or **Stock Units** (except for a Transfer to "**immediate family**" **members** by gift), then such holder shall first give *written* notice to the corporation through its **secretary** of the holder's intent to transfer such **shares** of Common Stock or **Stock Units ("Offered Stock or Units")**, which notice **shall describe** the proposed Transfer and **specify** the **Offered Stock or Units** at issue, the identity of the bona fide **transferee**, and the **consideration** and **terms** of payment, if any (collectively, an "**Offering Notice**"). The Offering Notice shall **constitute an** offer to sell the **Offered Stock or Units to** the corporation at a **price** of **\$25 per** share of Common Stock or **\$25 per Stock Unit**, as the **case may** be. Within ninety (90) days of receipt of an **Offering** Notice for a bona fide voluntary **Transfer**, the corporation shall purchase such **Offered Stock** or **Units at** the price of **\$25 per** share of Common Stock or **\$25 per Stock Unit**, as the **case may** be.

Whenever a holder of shares of Common Stock or **Stock Units** has any notice or knowledge of any attempted, impending or consummated foreclosure sale or other

involuntary Transfer of any of the holder's shares of Common **Stock** or **Stock Units** ("Involuntary **Stock** or **Units**") (except for a Transfer to "immediate family" members), whether by **court** order or otherwise, he **shall** give immediate written notice thereof (an "Involuntary Transfer Notice") to the corporation through its **secretary**. Whenever the corporation **has any** other notice **or** knowledge of **any** such attempted, **impending** or **consummated** foreclosure sale or other involuntary Transfer, it **may** at **any** time give **written** notice thereof to the holder. In either **case**, such a holder shall disclose forthwith to the **corporation** all pertinent information in his possession relating thereto. After **receipt** of an **Involuntary** Transfer Notice by the corporation or the giving of **notice** by the **corporation**, the corporation **shall** have the right to purchase such **Involuntary Stock** or **Units** at a price of \$25 **per** share of **Common Stock** or \$25 **per Stock Unit**, as the **case may** be, at any time.

**Section 5. Restrictions on Ownership: Fractional Shares.** No holder of **Common Stock** shall be **permitted** to own in excess of **two** hundred (200) **shares** of **Common Stock** **unless** said **excess** shares were **owned** by said **stockholder** **prior to February 9, 1950**. No holder of **Stock Units** **shall be** permitted to own in **excess** of, two hundred (200) **Stock Units**. The corporation is authorized to issue **Special Stock** in **Stock Units** each of which **represents** a one **one-thousandth** fraction of a share of **Special Stock**, but the corporation shall not **issue** other **fractions** of shares of **Special Stock**. The corporation shall **issue** **Common Stock** only in **whole** shares.

## **ARTICLE VII**

### ***NOMINATING COMMITTEE***

Not more than **sixty** (60) nor less than ten (10) **days** prior to the annual meeting the President **shall** select a Chairman of a Nominating Committee and not less than three (3) nor **more** than **six** (6) **members** in **addition** thereto to propose a slate of officers, **directors** and members of the Executive Committee.

The Chairman shall be a **Director**. The members shall be holders **of common stock** and **shall** include one (1) officer of the corporation. The slate chosen by the Nominating **Committee**, which **may** contain one or more candidates for each or **any office**, shall **be** submitted in writing to the proper meeting, to-wit, at the stockholders'

or **directors'** meeting, by the **Chairman** of the Nominating Committee when called upon to do so by the presiding officer of the meeting.

## **ARTICLE VIII**

### ***VOTING OF SHARES IN OTHER CORPORATIONS OWNED BY THE CORPORATION***

Subject always to the specific **directions** of the Board of **Directors**, any share or shares of stock issued by any other corporation and owned or controlled by the **corporation** may be voted ~~at~~ any shareholders' meeting of the other corporation by the President of the **corporation** if he be present, or in his absence by any **Vice-President** of the **corporation** who may be present. Whenever, in the judgment of the President, or, in his absence, of an **Vice-President**, it is desirable for the **corporation** to execute a proxy or give a shareholders' consent in respect to any share or shares of stock issued by any other corporation and owned or controlled by the corporation, the proxy or consent shall be executed in the name of the **corporation** by the President or one of the **Vice-Presidents** of the corporation without **necessity** of any authorization by the **Board** of **Directors**. Any **person** or persons designated in the manner above stated as the proxy or **proxies** of the **corporation** shall have full right, power and authority to vote the share or shares of **stock** issued by the **other** corporation.

## **ARTICLE IX**

### ***FISCAL YEAR***

The **fiscal** year of the corporation shall begin on the **first** day of **April** and end on the thirty-first day of **March** in each year.

## **ARTICLE X**

### ***SEAL***

The Board of Directors shall provide a corporate seal which shall be circular in **form** and shall **have** inscribed **thereon** the name of the corporation and the state of incorporation and the words "Corporate Seal".

## **ARTICLE XI**

### ***ORDER OF BUSINESS***

The order of **business** at the annual stockholders' meeting shall be:

1. A reading of the notice of the **meeting** and report as to proper mailing **and/or** service.
2. A report by the **Secretary** of the number of shares in attendance (in person and by proxy).
3. A reading of the **minutes** of the last meeting.
4. **An annual report by the President, which shall be mandatory.**
5. **An annual report by the Treasurer.**
6. Such other **business** as **may** properly **come** before the meeting.
7. The appointment of a presiding officer to preside over the election of **Directors**. Said **presiding** officer shall appoint **tellers**, not less **than** two (2) in **number**.
8. A **request** by **that** presiding **officer** for the **slate** of directors proposed by the Nominating Committee.
9. Receive **any** nominations **from** the floor for the **Directors** to be presented to the **Nominating** Committee for the next **year's** **election**.
10. The election of **Directors** for the ensuing **year**.

## **ARTICLE XII**

### ***AMENDMENTS***

These Bylaws **may** be altered, amended or repealed and **new** Bylaws **may** be adopted by the Stockholders at **any** annual or **special meeting** by a **majority** of the outstanding **stock** vote.