GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Tel 202.955.8500
gibsondunn.com

Elizabeth A. Ising
Direct: +1 202.955.8287
Fax: +1 202.530.9631
Eising@gibsondunn.com

January 19, 2024

VIA ONLINE SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *VeriSign, Inc.*
Stockholder Proposal of John Chevedden
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, VeriSign, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "2024 Proxy Materials") a stockholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") received from John Chevedden (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

If adopted, the Proposal would result in an automatic amendment to the Company's Bylaws (the "Bylaws"). The Proposal states:

> The Bylaws of Verisign, Inc. are amended as follows:
>
> Article II, Section 16. is deleted and replaced in its entirety as follows:
>
> Compensation. The Board of Directors shall not have any authority to fix the compensation of directors. The compensation of directors the corporation pays shall be fixed at $1 in a fiscal year; provided, however, the corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholders votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Company. The Board of Directors shall have the authority to provide for payment of expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors. The Board of Directors shall also have the authority to provide for payment expenses of attendance, if any, payable to members of committees for attending committee meetings. Nothing herein contained shall preclude any director from serving the corporation in any other capacity and receiving compensation for such services.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponent, is attached hereto as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2024 Proxy Materials pursuant to:

- Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law; and
- Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Implementation Of The Proposal Would Cause The Company To Violate Delaware Law

A. Background

Rule 14a-8(i)(2) permits a company to exclude a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal or foreign law to which it is subject." *See The Goldman Sachs Group, Inc.* (avail. Feb. 1, 2016); *Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). The Company is incorporated under the laws of the State of Delaware. As discussed below, and for the reasons set forth in the legal opinion provided by Morris, Nichols, Arsht & Tunnell LLP, the Company's Delaware counsel, attached hereto as Exhibit B (the "Delaware Law Opinion"), we believe that the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

On numerous occasions, the Staff has permitted the exclusion of stockholder proposals pursuant to Rule 14a-8(i)(2) where the proposal, if implemented, would violate state law according to a legal opinion signed by counsel. For example, in *Bank of America*, the Staff concurred with the exclusion of a proposal to amend a Delaware corporation's bylaws to establish a board committee and authorize the board chairman to appoint members of the committee. The proposal was excluded under Rule 14a-8(i)(2) since Delaware law provides that only the board can appoint members of the board committees; stockholders cannot specify how committee members are to be appointed. *See* 8 Del. C. § 141(c)(2); § 141(a). *See also, e.g.*, *The Goldman Sachs Group, Inc.* (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal that would cause the company to violate Delaware law relating to board committee composition); *AT&T Inc.* (avail. Feb. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal which, if approved, would cause the company

to violate Delaware law relating to stockholders' ability to act by written consent); *Marathon Oil Corp.* (avail. Feb. 6, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal, which, if implemented, would cause the company to violate a fundamental rule of Delaware law relating to discrimination among holders of the same class of stock); *MeadWestvaco Corp.* (avail. Feb. 27, 2005) (concurring with the exclusion under Rule 14a-8(i)(2) of a proposal which, if implemented, would cause the company to violate the "one-vote-per-share rule" under Delaware law by impermissibly imposing a per capita voting standard); *Hewlett-Packard Co.* (avail. Jan. 6, 2005) (same); *Northrop Corp.* (avail. Mar. 8, 1991) (concurring with the exclusion under the predecessor rule to Rule 14a-8(i)(2) of a proposal requesting the establishment of a position on the company's board of directors to represent the interests of the company's employees and retirees because the proposal would require the new director to act in a manner inconsistent with the fiduciary duty to act in the interest of the company and its stockholders as a whole under Delaware law).

Here, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal would require the Company to impermissibly divest certain stockholders of their voting rights on specific matters submitted for stockholder approval. Accordingly, the Proposal may properly be excluded under Rule 14a-8(i)(2).

B. Implementation Of The Proposal Would Cause The Company To Violate Delaware Law Because It Would Require The Company To Divest Certain Stockholders Of Their Voting Rights

If approved by stockholders, the Proposal would result in the automatic amendment of the Bylaws. Upon effectiveness, the Bylaw amendment would, among other things, prohibit the Company's Board of Directors (the "Board") from awarding annual compensation to Company directors over $1 unless, among other requirements, such compensation is approved by a "majority of stockholders votes present in person or represented by proxies" with such vote to "include *only stockholder votes of stockholders that are not directors of the Company*" (emphasis added).

As explained in the Delaware Law Opinion, implementation of the Proposal would cause the Company to violate Delaware law because Delaware law protects stockholders' right to "one vote for every share" and prevents a company from disenfranchising stockholders, except through an amendment to the company's certificate of incorporation.

Section 212(a) ("Section 212(a)") of the Delaware General Corporation Law (the "DGCL") expressly grants each stockholder of a Delaware corporation a right to cast one vote per share of stock owned on all matters submitted to stockholder action. In other words, each stockholder is entitled to "one vote for every share." Section 212(a) states:

> Unless otherwise provided in the *certificate of incorporation* and subject to § 213 of this title,[1] each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder (emphasis added).

The Proposal, which requires that "majority [approval] shall *include only* stockholder *votes of stockholders that are not directors of the Company*" (emphasis added), would result in the disenfranchisement of stockholders who also serve as Company directors in direct contravention of Section 212(a). As explained in the Delaware Law Opinion:

> The reference to "each stockholder" in Section 212(a) includes each director who holds common stock. Each director of the [Company] is therefore entitled to one vote for each share he or she holds if the Bylaws were amended to require a stockholder vote to authorize director compensation. The Proposal would violate the DGCL because it would divest certain stockholders (that is, stockholders who are directors) of their voting rights by Bylaw amendment.

Moreover, under Delaware law, the stockholder right to "one vote for every share" may not be modified by approval of the Proposal's binding Bylaw amendment. Section 212(a) provides that "[u]nless otherwise provided in the certificate of incorporation," companies may not deviate from the "one vote for every share" right. The Delaware Law Opinion explains:

> The "one vote for every share" voting right does not apply if contrary provisions are made "in the certificate of incorporation." We have reviewed the Restated Certificate of Incorporation of the [Company], and it contains no provision opting out of the "one vote for every share" right. The Proponent asks the stockholders of the [Company] to violate Section 212(a) of the DGCL by adopting a bylaw that opts out of the "one vote for every share" rule. But Section 212(a) is clear: any opt out must be included solely in the certificate of incorporation, not in a bylaw.

As discussed further in the Delaware Law Opinion, and in keeping with the express provisions of Section 212(a), "[i]n each case where the Delaware courts have upheld a corporation's

---

[1] As explained in the Delaware Law Opinion, "Section 213 allows a corporation's board of directors to fix a record date in advance of a stockholder meeting, to determine which stockholders are entitled to vote at an upcoming meeting. Section 213 means only that a director must hold stock as of the record date for a meeting in order to vote at the meeting. The Proposal would disenfranchise directors even if they hold stock as of the record date for a meeting, so the reference to Section 213 in Section 212(a) does not apply to the Proposal."

deviation from the 'one vote for every share' rule, that deviation was implemented through a provision in the certificate of incorporation, not the bylaws." As noted in the Delaware Law Opinion, the Proposal "does not contemplate any such amendment of the [Company's] Restated Certificate of Incorporation" but "instead seeks unilateral amendment of the Bylaws by the stockholders to disqualify certain shares that would be entitled to vote in connection with a stockholder vote to authorize director compensation."

The Staff has previously concurred with the exclusion under Rule 14a-8(i)(2) of a proposal that similarly requested a Delaware company disqualify a subset of stockholders from voting on a certain type of matter because such action would be invalid under Delaware law. In *Quotient Technology Inc.* (avail. May 6, 2022), the proposal requested the company's board of directors "disqualify all shares owned and/or controlled by both current and former [n]amed [e]xecutive [o]fficers" from voting on a proposal to approve the company's tax benefits preservation plan proposal. In support of its argument that the proposal would cause the company to violated Delaware law, Quotient Technology provided a legal opinion issued by its Delaware counsel, Morris, Nichols, Arsht & Tunnell LLP. In its opinion, Quotient Technology's Delaware counsel stated the DGCL "grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action" and further explained that any departure from the "one share, one vote rule . . . can only be done by undertaking the drastic step of amending its certificate of incorporation, with a resolution setting forth an amendment that is adopted and approved by the board and the stockholders." Importantly, Quotient Technology's certificate of incorporation did not contain a provision opting the company out of the "one vote for every share" right of Section 212(a). Accordingly, because the proposal in Quotient Technology sought to disqualify certain stockholders without having both the stockholders and the board of directors approve appropriate amendments to the company's certificate of incorporation, Quotient Technology argued that, in keeping with the opinion of its Delaware counsel, the proposal would cause the company to violate Delaware law. The Staff concurred with exclusion under Rule 14a-8(i)(2) "not[ing] that in the opinion of Delaware counsel, implementation of the [proposal] would cause the [c]ompany to violate state law."

Here, the Proposal would result in a binding Bylaw amendment that would similarly disqualify a subset of stockholders (stockholders who are Company directors) from voting on a specific matter (director compensation as mandated by the Proposal). As in *Quotient Technology*, the Company's Restated Certificate of Incorporation (the "Certificate") does not contain a provision opting out of the "one vote for every share rule" and the Proposal does not seek an amendment to the Certificate to opt out of that rule. Therefore, implementation of the Proposal's binding Bylaw amendment is impermissible because, as explained in the Delaware Law Opinion, "Section 212(a) neither contemplates nor permits amending bylaws to

disenfranchise a sub-group of stockholders." Accordingly, as in *Quotient Technology*, the Proposal is excludable pursuant to Rule 14a-8(i)(2) because, as supported by the Delaware Law Opinion, implementation of the Proposal would cause the Company to violate Delaware law.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because The Company Lacks The Power And Authority To Implement The Proposal

Rule 14a-8(i)(6) permits a company to exclude a stockholder proposal "[i]f the company would lack the power or authority to implement the proposal." The Company believes that this exclusion applies to the Proposal because the Company lacks the power and authority to implement a proposal that would violate Delaware law. The Staff has concurred on numerous occasions that a company may exclude a proposal under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the proposal's adoption would cause the company to violate state law. *See, e.g.*, *eBay Inc.* (avail. Apr. 1, 2020); *Trans World Entertainment Corp. (Robert J. Higgins TWMC Trust)* (avail. May 2, 2019); *PayPal Holdings, Inc.* (avail. Mar. 9, 2018); *IDACORP, Inc.* (avail. Mar. 13, 2012); *RTI Biologics, Inc.* (avail. Feb. 6, 2012); *NiSource Inc.* (avail. Mar. 22, 2010).

As discussed above and more broadly in the Delaware Law Opinion, the Company cannot implement the Proposal's binding Bylaw amendment to divest certain stockholders of their voting rights without violating Section 212(a) because the Certificate does not contain any provision opting out of the "one vote for every share right." The Delaware Law Opinion makes clear that "Section 212(a) neither contemplates nor permits amending bylaws to disenfranchise a sub-group of stockholders" and that implementation of the Proposal would cause the Company to violate Delaware law. Therefore, the Company lacks the power and authority under Delaware law to implement the Proposal, and, consistent with the precedents cited above, the Proposal is excludable under Rule 14a-8(i)(6).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further

assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Terence E. Kaden, the Company's Vice President, Associate General Counsel and Assistant Secretary, at (703) 948-3475.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Terence E. Kaden, VeriSign, Inc.
John Chevedden

EXHIBIT A

[redacted] **JOHN CHEVEDDEN** [redacted]

Mr. Thomas Indelicarto
Secretary
Verisign, Inc. (VRSN)
12061 Bluemont Way
Reston, VA 20190
PH: 703-948-3200

Dear Mr. Indelicarto,

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company.

This Rule 14a-8 proposal is intended as a low-cost method to improve company performance – especially compared to the substantial capitalization of our company.

This proposal is for the next annual shareholder meeting.

I intend to continue to hold the required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders and beyond as is or will be documented in my ownership proof.

This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

Please assign the proper sequential proposal number in each appropriate place.

Please use the title of the proposal in bold in all references to the proposal in the proxy including the table of contents, like Board of Directors proposals, and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message to [redacted] it may very well save you from formally requesting a broker letter from me.

Please confirm that this proposal was sent to the correct email address for rule 14a-8 proposals.
Per SEC SLB 14L, Section F, the Securities and Exchange Commission Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."
I so request.

Sincerely,

[signature] [signature]

John Chevedden

December 8, 2023

Date

cc: Terence E. Kaden <tkaden@verisign.com>
Aisha Reynolds <areynolds@verisign.com>
David Atchley <datchley@verisign.com>

[VRSN – Rule 14a-8 Proposal, December 8, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Bylaw Amendment: Shareholder Approval of Director Compensation

The Bylaws of Verisign, Inc. are amended as follows:

Article II, Section 16. is deleted and replaced in its entirety as follows:

Compensation. The Board of Directors shall not have any authority to fix the compensation of directors. The compensation of directors the corporation pays shall be fixed at $1 in a fiscal year; provided, however, the corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholders votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Company. The Board of Directors shall have the authority to provide for payment of expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors. The Board of Directors shall also have the authority to provide for payment expenses of attendance, if any, payable to members of committees for attending committee meetings. Nothing herein contained shall preclude any director from serving the corporation in any other capacity and receiving compensation for such services.

Supporting statement

Verisign shareholders seek an independent Board of Directors, one that has as its sole objective representing stockholders without conflict of interest. One interest pertains to compensation and how Verisign compensates directors for board service. Stockholders seek the authority to approve compensation that directors receive from Verisign.

Stockholders want and need authority over how and how much Verisign compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of shareholders. Currently, directors design and approve compensation with no approval from stockholders. Directors receive whatever compensation they desire. This bylaw amendment corrects this problem.

The bylaw amendment provides for a stockholder vote on director compensation. Directors can continue to design and propose compensation structure and amount, including the mix and amount of cash and equity. Stockholders will have final approval over whether Directors receive what directors propose. Stockholders will vote on Director compensation as disclosed in the proxy statement for a stockholder meeting before the fiscal year in which Directors receive that compensation. Shares owned by Directors will not count in the vote, so the vote result represents the independent views of stockholders.

We urge shareholders to approve this bylaw amendment and assume proper authority over the compensation of directors who represent us.

Notes:

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot. If there is objection to the title please negotiate or seek no action relief as a last resort.

"Proposal 4" stands in for the final proposal number that management will assign.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(I)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also: Sun Microsystems, Inc. (July 21, 2005).

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. **I intend to continue holding the same required amount of Company shares through the date of the Company's next Annual Meeting of Stockholders as is or will be documented in my ownership proof.**

Please acknowledge this proposal promptly by email [redacted PII].

It is not intend that dashes (–) in the proposal be replaced by hyphens (-).
Please alert the proxy editor.

The color version of the below graphic is to be published immediately after the bold title line of the proposal at the **beginning** of the proposal and be **center justified**.

Please use the title of the proposal in bold in all references to the proposal in the proxy and on the ballot.
If there is objection to the title please negotiate or seek no action relief as a last resort.
Please do not insert any management words between the top line of the proposal and the concluding line of the proposal.

EXHIBIT B

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

January 19, 2024

VeriSign, Inc.
12061 Bluemont Way
Reston, Virginia 20190

RE: Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

This letter confirms our opinion regarding a stockholder proposal (the "Proposal") submitted to VeriSign, Inc., a Delaware corporation (the "Corporation"), by John Chevedden (the "Proponent") for inclusion in the Corporation's proxy materials for its 2024 annual meeting of stockholders. For the reasons explained below, it is our opinion that implementation of the Proposal would cause the Corporation to violate Delaware law and that the Company lacks the power and authority to implement the Proposal.

The Proposal would result in an automatic amendment to the Corporation's Bylaws. The amendment would prohibit the Corporation's Board of Directors from awarding annual compensation to directors over $1 unless, among other requirements, the compensation is approved by a "majority of stockholders votes present in person or represented by proxies." This vote on director compensation "shall include only stockholder votes of stockholders that are not directors" of the Corporation.[1]

---

[1] The Proposal provides:

> The Bylaws of Verisign, Inc. are amended as follows: / Article II, Section 16 [of the Bylaws] is deleted and replaced in its entirety as follows: / Compensation. – The Board of Directors shall not have any authority to fix the compensation of directors. The compensation of directors the corporation pays shall be fixed at $1 in a fiscal year; provided, however, the corporation may pay, grant, or award compensation greater than $1 in a fiscal year if such compensation has been (1) disclosed to stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation; (2) submitted to an approval vote of stockholders at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholders votes present in person or represented by proxies and entitled to vote cast in favor of the disclosed annual compensation at an annual or special meeting of stockholders in advance of the fiscal year in which the corporation will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Company. The Board of Directors shall have the authority to provide for payment of expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors. The Board of Directors shall also have the authority to provide for payment expenses of attendance, if any, payable to members of committees

Section 141(h) of the Delaware General Corporation Law (the "DGCL") authorizes a board of directors to fix director compensation unless that authority is restricted in the certificate of incorporation or bylaws. We doubt that a bylaw requiring annual stockholder authorization for director compensation over $1 is a lawful "restriction" under Section 141(h). But we need not express a view on that broader issue because the stockholder vote included in the Proposal would violate the specific and express provisions of Section 212(a) of the DGCL.

The DGCL grants each stockholder of a Delaware corporation a fundamental franchise right to cast one vote per share of stock on all matters submitted for stockholder action. All stockholders are entitled to one vote per share. Section 212(a) of the DGCL states:

> Unless otherwise provided in the certificate of incorporation and subject to § 213 of this title, each stockholder shall be entitled to 1 vote for each share of capital stock held by such stockholder.[2]

The Proposal would cause the Corporation to violate Section 212(a). The reference to "each stockholder" in Section 212(a) includes each director who holds common stock. Each director of the Corporation is therefore entitled to one vote for each share he or she holds if the Bylaws were amended to require a stockholder vote to authorize director compensation. The Proposal would violate the DGCL because it would divest certain stockholders (that is, stockholders who are directors) of their voting rights by Bylaw amendment.

Under Section 212(a), the "one vote for every share" right may be modified only in one of two ways, and neither of them applies to the Proposal:

- Section 212(a) is "subject to" Section 213 of the DGCL. Section 213 allows a corporation's board of directors to fix a record date in advance of a stockholder meeting, to determine which stockholders are entitled to vote at an upcoming meeting. Section 213 means only that a director must hold stock as of the record date for a meeting in order to vote at the meeting. The Proposal would disenfranchise directors even if they hold stock as of the record date for a meeting, so the reference to Section 213 in Section 212(a) does not apply to the Proposal.

- The "one vote for every share" voting right does not apply if contrary provisions are made "in the certificate of incorporation." We have reviewed the Restated Certificate of Incorporation of the Corporation, and it contains no provision opting out of the "one vote for every share" right. The Proponent asks the stockholders of the Corporation to violate Section 212(a) of the DGCL by adopting a bylaw that opts out of the "one vote for every

---

for attending committee meetings. Nothing herein contained shall preclude any director from serving the corporation in any other capacity and receiving compensation for such services.

[2] 8 *Del. C.* § 212(a).

share" rule. But Section 212(a) is clear: any opt out must be included solely in the certificate of incorporation, not in a bylaw.[3]

Section 212(a) neither contemplates nor permits amending bylaws to disenfranchise a sub-group of stockholders.[4] The case law interpreting Section 212(a) supports this conclusion. In each case where the Delaware courts have upheld a corporation's deviation from the "one vote for every share" rule, that deviation was implemented through a provision in the certificate of incorporation, not the bylaws.[5] The Proposal does not contemplate any such amendment of the Corporation's Restated Certificate of Incorporation. The Proposal instead seeks unilateral amendment of the Bylaws by the stockholders to disqualify certain shares that would be entitled to vote in connection with a stockholder vote to authorize director compensation.

Because the Proposal would nullify the voting power of stock owned by directors, the Proposal asks the stockholders to amend the Bylaws of the Corporation in a manner expressly prohibited by Delaware law. Accordingly, it is our opinion that implementation of the Proposal would cause the Corporation to violate Delaware law and that the Company lacks the power and authority to implement the Proposal.

Very truly yours,

Morris, Nichols, Arsht & Tunnell LLP

17539438

---

3 When a statutory provision like Section 212(a) is subject only to opt-outs "otherwise provided in the certificate of incorporation," this language operates as a "bylaw excluder in the sense that those words make clear that the specific grant of authority in that particular statute is one that can be varied only by charter and therefore indisputably not one that can be altered by a § 109 bylaw." *Jones Apparel Group, Inc. v. Maxwell Shoe Company, Inc.*, 883 A.2d 837, 848 (Del. Ch. 2004).

4 In contrast to the Proposal, if directors are concerned that their compensation may be questioned or challenged in litigation, the directors might ask stockholders to *ratify* the compensation by a stockholder vote that excludes stock owned by directors. Ratification votes are voluntarily submitted by a board and are *in addition to* the vote required to authorize an action. *See Lewis v. Vogelstein*, 699 A.2d 327, 334 (Del. Ch. 1997) (distinguishing ratification votes from "those instances in which shareholder votes are a necessary step in authorizing a transaction."). The Proposal would impose a mandatory *authorization* vote, not a voluntary *ratification* vote. Accordingly, the Proposal must comply with the "one vote for each share" rule imposed by Section 212(a).

5 *See Colon v. Bumble, Inc.*, 2023 WL 5920100 (Del. Ch. Sept. 12, 2023); *Providence & Worcester Co. v. Baker*, 378 A.2d 121 (Del. 1977); *Williams v. Geier*, 1987 WL 11285 (Del Ch. May 20, 1987); *Sagusa, Inc. v. Magellan Petroleum Corp.*, 1993 WL 512487 (Del. Ch. Dec. 1, 1993), *aff'd*, 650 A.2d 1306 (Del. 1994) (Table).