



DIVISION OF
CORPORATION FINANCE

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

February 7, 2022

Frances Mi
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Re: Etsy, Inc. (the "Company")
Incoming letter dated February 7, 2022

Dear Ms. Mi:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the New York City Carpenters Pension Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 31, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Edward J. Durkin
United Brotherhood of Carpenters
and Joiners of America

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VIA EMAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: **Etsy, Inc.**
Stockholder Proposal of New York City Carpenters Pension Fund

Ladies and Gentlemen:

We are writing on behalf of our client, Etsy, Inc., a Delaware corporation ("Etsy" or the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude from the proxy materials to be distributed by the

Company in connection with its 2022 annual meeting of stockholders (the “Proxy Materials”), the stockholder proposal (the “Proposal”) and supporting statement (the “Supporting Statement”) submitted by the New York City Carpenters Pension Fund (the “Proponent”), by a letter dated December 15, 2021.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to exclude the Proposal from the Proxy Materials. Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 calendar days before the date that the Company intends to file its definitive Proxy Statement with the Commission.

Rule 14a-8(k) of the Exchange Act and Section E of SLB 14D provide that a stockholder proponent is required to send companies a copy of any correspondence that the stockholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

I. The Proposal

The Proposal and the Supporting Statement are attached hereto as Exhibit A. The Proposal states:

RESOLVED: That the shareholders of Etsy, Inc. request that the Board initiate the appropriate governance process to modify its classified board structure of three classes with three year terms to add a collapsing stagger feature. The collapsing stagger feature amendment should provide that when a director in a class fails to win re-election but continues to serve on the Board as a “holdover” director, then all directors in the “holdover” director’s class must stand for re-election at the next annual meeting of shareholders along with those director nominees in the class scheduled to stand for election at that meeting.

II. Bases for Exclusion

In accordance with Rule 14a-8 of the Exchange Act, we hereby respectfully request that the Staff concur in our view that the Proposal and the Supporting Statement may properly be excluded from the Proxy Materials for the following reasons:

- pursuant to Rule 14a-8(i)(2) of the Exchange Act, because the Proposal would, if implemented, cause the Company to violate applicable state law, including the Delaware General Corporation Law;

- pursuant to Rule 14a-8(i)(6) of the Exchange Act, because the Company lacks the power or authority to implement the Proposal;
- pursuant to Rule 14a-8(i)(8)(ii) of the Exchange Act, because the Proposal, if implemented, would remove a director from office before his or her term expired; and
- pursuant to Rule 14a-8(i)(3) of the Exchange Act, because the Proposal is materially false or misleading and contrary to Rule 14a-9.

III. Background

Pursuant to Article V, Sections C and D of the Company's Amended and Restated Certificate of Incorporation (the "Certificate"), the Company's board of directors (the "Board") is divided into three classes, with each director to serve upon election for a three-year term. Article V, Sections C and D (the "Classified Board Certificate Provisions") specifically provide as follows (emphasis added):

C. Classes of Directors. Subject to the special rights of holders of any series of Preferred Stock to elect directors, the Board *shall be divided into three classes, as nearly equal in number as possible*, designated Class I, Class II and Class III. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III at the time such classification becomes effective.

D. Terms of Office. Subject to the special rights of holders of any series of Preferred Stock to elect directors, *each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected*; provided that each director initially assigned to Class I shall serve for a term expiring at the Corporation's first annual meeting of stockholders held after the effectiveness of this Certificate of Incorporation; each director initially assigned to Class II shall serve for a term expiring at the Corporation's second annual meeting of stockholders held after the effectiveness of this Certificate of Incorporation; and each director initially assigned to Class III shall serve for a term expiring at the Corporation's third annual meeting of stockholders held after the effectiveness of this Certificate of Incorporation; provided further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, disqualification, resignation or removal.

The Classified Board Certificate Provisions are also reflected in Article II, Section 2.2 of the bylaws of the Company (the "Bylaws"), which provides, in relevant part:

Section 2.2. **Number, Election and Qualification.** [...] Subject to the special rights of holders of any series of Preferred Stock to elect directors

and as provided in Etsy's Certificate of Incorporation, the Board is divided into three classes, designated: Class I, Class II and Class III. If the number of directors is changed, any increase or decrease will be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible.

IV. Analysis

A. The Proposal may be excluded pursuant to Rule 14a-8(i)(2) because the Proposal would, if implemented, cause the Company to violate Delaware law.

Rule 14a-8(i)(2) permits a company to exclude a stockholder proposal from its proxy materials "if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." As noted above, the Company is incorporated in Delaware and, accordingly, is subject to, and governed by, the Delaware General Corporation Law (the "DGCL"). As summarized below and based on the opinion of the Company's Delaware counsel, Morris, Nichols, Arsht & Tunnell LLP (the "Delaware Law Opinion"), attached hereto as Exhibit B, the Company believes implementation of the Proposal would cause the Company to violate the DGCL as follows:

- The Proposal would violate Section 141(d) of the DGCL because this section mandates that (i) when a board is divided into three classes, directors must be elected to full three-year terms (not one-year terms as the Proposal would require if there is a holdover director¹) and (ii) directors generally elected by the voting stockholders at large (here, the directors elected by the holders of common stock) must all be elected to terms of equal length (that is, equal terms of three years, and not varying terms of one or three years as the Proposal would require if there is a holdover director).
- The Proposal would also violate Section 141(b) of the DGCL because the section mandates that once a director is successfully elected to a three-year term, a director is entitled to serve the entirety of his or her three-year term, unless the

¹ We note that, under the Bylaws, directors are elected by plurality vote. *See* the Bylaws, Article I, Section 1.9. Under a plurality voting standard, the nominee who receives the highest number of votes for a directorship is validly elected, even if those votes are less than a majority of the shares entitled to vote, meaning a single vote is sufficient to elect in an uncontested election. Accordingly, the circumstances in which an incumbent director could "fail[] to win re-election but continue[] to serve on the Board as a 'holdover' director" are a null set. Only if no votes were cast in favor of the director's re-election could he or she fail to be elected but remain in office as a "holdover" director. The Board has adopted a resignation policy, pursuant to which directors (who have been elected by plurality vote) are expected to offer their resignation if they receive more votes "withheld" than "for" for their election, but this policy would result only in a director resigning from a three-year term to which he or she has been duly elected under the plurality voting standard. This resignation policy also does not result in "holdover" directors. Except in Section D below, in this letter, we address the Proposal on the basis of its terms, and accept the theoretical possibility that a director of the Company could be a "holdover" director, however unlikely that possibility might be.

director's successor is elected and qualified, the director resigns, the director is expressly removed by stockholders or the director is disqualified from continuing to hold office for failure to satisfy a director qualification provision adopted before the director's election. A duly elected director cannot be prematurely terminated by reason of the failed re-election of a holdover director as the Proposal would require.

Accordingly, the Company respectfully submits that it can properly exclude the Proposal from its Proxy Materials under Rule 14a-8(i)(2).

The Proposal would violate Section 141(d) of the DGCL if it were implemented. Section 141(d) states in relevant part as follows (emphasis added):

Section 141. Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonstock corporations; reliance upon books; action without meeting; removal.

[...]

(d) The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; and *at each annual election held after such classification becomes effective, directors shall be chosen for a full term*, as the case may be, to succeed those whose terms expire. The certificate of incorporation or bylaw provision dividing the directors into classes may authorize the board of directors to assign members of the board already in office to such classes at the time such classification becomes effective. The certificate of incorporation may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for *such term*, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors. In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors. Any such provision conferring greater or lesser voting power shall apply to voting in any committee, unless otherwise provided in the certificate of incorporation or bylaws. If the certificate of incorporation provides that 1 or more directors shall have more or less than 1 vote per director on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

Under Section 141(d) of the DGCL and the Company's governing documents, except for the first two inaugural classes of a staggered board, each director class of Etsy's Board "shall be chosen for a full term" to "succeed those whose terms expire." Further, the Delaware Supreme Court has expressly held that, when a board is divided into three staggered classes, "full term" means a three-year term. *See Airgas, Inc. v. Air Products & Chemicals, Inc.*, 8 A.3d 1182, 1192 (Del. 2010) (interpreting a certificate of incorporation providing that directors serve for a term "expiring at the annual meeting of stockholders held in the third year following the year of their election" to mean directors were entitled to serve "three year terms").

Here, the Proposal requests that the Board "initiate the appropriate governance process to *modify its classified board structure of three classes with three-year terms* to add a collapsing stagger feature" (emphasis added). Specifically, the Proposal requests an amendment to the Company's three-class, three-year board structure to add a provision that "when a director in a class fails to win re-election but continues to serve on the Board as a 'holdover' director, then all directors in the 'holdover' director's class must stand for re-election at the next annual meeting of shareholders along with those director nominees in the class scheduled to stand for election at that meeting." Put another way, the Proposal effectively requests that the Board amend its three-class board structure with three-year terms to provide that if there is one "holdover" director, directors who are successfully elected to a Board class would serve less than the required "full term" if the class happens to include a holdover director who has not been re-elected. The Proposal therefore violates Section 141(d) of the DGCL.

The Proposal would also violate another facet of Section 141(d) by permitting the terms of certain directors to differ from the terms of other directors. Under the first sentence of Section 141(d) and the Company's governing documents, directors elected by the stockholders at large (namely the holders of Etsy common stock) are to be elected to "full terms" of three-years. While Section 141(d) permits a corporation to fix (in its certificate of incorporation) different terms for directors that are specially elected by a separate class or series of stock or different voting powers for different directors, it does not authorize variable terms for directors elected by the stockholders at large. The Proposal would therefore violate Delaware law because it would allow the stockholders at large (the holders of common stock) to elect some directors to one-year terms and other directors to three-year terms, depending on whether a director serves in a class with a holdover director.

The Proposal would violate Section 141(b) of the DGCL if it were implemented. Once elected, a director's term (in Etsy's case, a term of three years) cannot be shortened or terminated in the manner contemplated by the Proposal. Section 141(b) provides that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." As discussed in more detail in the Delaware Law Opinion, Section 141(b) of the DGCL, together with the cases interpreting it, set out only four means by which the term of a sitting director can be brought to a close: (i) when the director's successor is elected and qualified once the current director's term expires; (ii) if the director resigns; (iii) if the director is removed; or (iv) if the director is disqualified from continuing to hold office by a qualification adopted before

his or her term begins. Here, the Proposal would cut short a duly elected director's three-year term based on the election results for an entirely different director serving in the same class, which does not comport with any of the four exclusive means to unseat a director. Thus, the Proposal would be in direct conflict with Section 141(b) of the DGCL and be a violation of Delaware law.

Etsy is permitted to exclude the Proposal because its implementation would cause the Company to violate the state law to which the Company is subject. The Staff has consistently permitted the exclusion of a stockholder proposal where the implementation of the proposal would cause the company to violate the state law to which it is subject. *See, e.g., CTS Corporation* (Mar. 19, 2021) (concurring with the exclusion of a proposal to permit written consent by the shareholders entitled to cast the minimum number of votes necessary to authorize an action at a meeting as the proposal violated the Indiana Business Corporation Law, which permits shareholders to take action by unanimous shareholder written consent only); *Crown Holdings, Inc.* (Mar. 2, 2021) (concurring with the exclusion of a proposal to permit at least 10% of the voting power of outstanding shares to call a special meeting as the proposal violated the Pennsylvania Business Corporation Law, which required that articles of incorporation adopted after July 2015 may not provide that a special meeting be called by less than 25% of the voting power of outstanding shares); *eBay Inc.* (Apr. 1, 2020) (concurring with the exclusion of a proposal that required the company to permit its employees to elect at least 20% of the board members, as the proposal violated Sections 211(b) and 212(a) of the DGCL, pursuant to which directors are elected by stockholders and each stockholder is entitled to one vote for each share, and the DGCL does not permit a corporation to modify this requirement in its governing documents); *Oshkosh Corporation* (November 21, 2019) (concurring with the exclusion of a proposal requesting that the board adopt a provision that a director who receives less than a majority vote be removed from the board immediately because directors may only be removed by shareholders or judicial proceeding and not by a board under Wisconsin law); *Trans World Entertainment Corporation* (May 2, 2019) (concurring with the exclusion of a proposal to amend the company's bylaws to provide that holders of 60% of outstanding shares constitute a quorum, as the proposal violated the New York Business Corporation Law, which prescribes that a quorum requirement greater than a majority may only be provided in the charter, the amendment of which requires board action and shareholder approval); *The Goldman Sachs Group, Inc.* (Feb. 1, 2016) (concurring with the exclusion of a proposal requesting a reform of the company's compensation committee to include outside experts from the general public, besides directors, as the proposal violated Section 141(c)(2) of the DGCL, which requires each board committee to consist of directors and does not permit individuals who are not directors to be members of a board committee). Here, similarly, implementation of the Proposal would violate state law, namely Sections 141(d) and 141(b) of the DGCL and the related case law interpreting such provisions, by improperly varying or shortening the terms of properly elected directors or improperly providing for their removal.

Further, the purported precatory nature of the Proposal (in that the Proposal requests that the Board initiate the process to modify its classified board structure as so proposed) does not preclude its exclusion if the implementation of the Proposal would violate state law. The Staff has repeatedly permitted exclusions of precatory or advisory

stockholder proposals pursuant to Rule 14a-8(i)(2) if the action called for in the proposal would violate state law. *See, e.g., CTS Corporation* (Mar. 19, 2021); *Crown Holdings, Inc.* (Mar. 2, 2021); *eBay Inc.* (Apr. 1, 2020); *Oshkosh Corporation* (Nov. 21, 2019); *The Goldman Sachs Group, Inc.* (Feb. 1, 2016). The Proposal's requested modification to Etsy's classified board structure of three classes and three-year terms (which structure the Supporting Statement notes as "providing a measure of protection from short-term shareholder and market pressures and their negative effects on corporate value") would as discussed above violate Sections 141(d) and 141(b) of the DGCL, and we respectfully request that the Staff concur that the Proposal may be excluded from the Company's proxy materials pursuant to Rule 14a-8(i)(2) under the Exchange Act.

B. The Proposal may be excluded pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposal.

Rule 14a-8(i)(6) provides that a company may properly omit a stockholder proposal from its proxy materials if the company lacks the power or authority to implement the proposal. As discussed above and in the Delaware Law Opinion, the Company cannot implement the Proposal without violating Sections 141(d) and 141(b) of the DGCL, and therefore lacks the authority to implement the Proposal.

The Staff has consistently allowed stockholder proposals to be excluded under both Rules 14a-8(i)(2) and 14a-8(i)(6) when the implementation of the proposal would violate state corporate law, so, accordingly, the company lacks the authority to implement the proposal. *See, e.g., eBay Inc.* (Apr. 1, 2020); *Trans World Entertainment Corporation* (May 2, 2019). Here, just as in *eBay* and *Trans World*, implementation of the Proposal would cause the Company to violate applicable state law, and therefore the Company lacks the power or authority under Delaware law to implement the Proposal. Accordingly, the Company believes that the Proposal is excludable under Rule 14a-8(i)(6) as well as Rule 14a-8(i)(2) as discussed above.

C. The Proposal may be excluded pursuant to Rule 14a-8(i)(8)(ii) because the Proposal, if implemented, would remove a director from office before his or her term expired.

Rule 14a-8(i)(8)(ii) states that a stockholder proposal may be excluded from a company's proxy statement if it "[w]ould remove a director from office before his or her term expired." According to the Commission, the purpose of Rule 14a-8(i)(8) "is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature. . . ." Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (Jul. 7, 1976) [41 FR 29982]. In 2010, the Commission amended Rule 14a-8(i)(8) to codify a long-standing position of the Staff pursuant to which the Commission permitted the exclusion of stockholder proposals that would have removed a director from office before his or her term expired. *See Facilitating Shareholder Director Nominations*, Release No. 34-62764 (Aug. 25, 2010) (stating that it amended the text of Rule 14a-8(i)(8) to "codify certain prior [S]taff

interpretations with respect to the types of proposals that would continue to be excludable pursuant to Rule 14a-8(i)(8)").

As discussed above, under the Certificate and DGCL Section 141(d), in any given year, approximately one-third of the Board is up for election for a three-year term. If implemented, the Proposal would require the terms of directors that won re-election in a "holdover" director's class to end earlier, so that all directors in the "holdover" director's class would stand for re-election at the next annual meeting of stockholders. This functionally results in the removal of such directors before their terms expire.

The Staff has repeatedly concurred that stockholder proposals, which, like the Proposal, have the effect of cutting short the terms of sitting directors, are excludable under Rule 14a-8(i)(8). *See, e.g., Texas Pacific Land Corporation* (Nov. 23, 2021) (concurring with the exclusion of a proposal asking for the board to be declassified, allowing for each board member to stand for election on an annual basis, as the proposal could disqualify directors previously elected from completing their terms on the board); *Impinj, Inc.* (Jul. 11, 2019) (concurring with the exclusion of a proposal to reorganize the board into one class with each director subject to election each year, and to complete the transition within one year, because the proposal could, if implemented, disqualify directors previously elected from completing their terms on the board); *United Therapeutics Corporation* (Apr. 4, 2019) (concurring with the exclusion of a proposal to reorganize the board into one class with each director subject to election each year, and to complete the transition within one year, because the proposal could, if implemented, disqualify directors previously elected from completing their terms on the board). As in *Texas Pacific Land*, *Impinj* and *United Therapeutics*, the Proposal would remove validly elected directors in a "holdover" director's class from office before the expiration of their three-year terms, by requiring them to stand for re-election at the next annual general meeting. Accordingly, the Company believes that the Proposal is excludable under Rule 14a-8(i)(8)(ii).

Staff Legal Bulletin No. 14 (Jul. 13, 2001) ("SLB 14") explained that under Rule 14a-8(i)(8), if implementing the proposal would disqualify directors previously elected from completing their terms on the board, the Staff may permit the proponent to revise the proposal so that it will not affect the unexpired terms of directors elected to the board. In *Texas Pacific Land* and *United Therapeutics*, the Staff noted that the proponent could cure the Rule 14a-8(i)(8) defect in the proposal by making clear that the proposal will not affect the unexpired terms of directors elected prior to its implementation, and, in *Impinj*, the Company had offered the proponent a seven-day period to revise the proposal, but the proponent chose not to do so. Here, however, the Proponent cannot cure this defect by making similar minor revisions. Rather, the Proposal contemplates that all future directors in a "holdover" director's class would have their three-year terms cut short. A more substantive revision would be needed to cure the defect such that it would alter the substance of the Proposal, and the Staff should not permit the Proponent to revise the Proposal.

D. The Proposal may be excluded pursuant to Rule 14a-8(i)(3) because the Proposal is materially false or misleading and contrary to Rule 14a-9.

Rule 14a-8(i)(3) provides that a stockholder proposal may be excluded if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9 of the Exchange Act. Rule 14a-9 provides that no solicitation may be made by means of any proxy statement containing "any statement, which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." Here, the Proposal requests that the Board adopt a collapsing stagger feature to its classified board structure that would be triggered in the event there is a director that fails to win re-election but continues to serve on the Board as a "holdover" director. However, the "holdover director" concept would unlikely ever apply to the Company. Under the Company's "plurality plus" model for director elections, directors are elected based on a plurality of votes received, with a policy that any director who receives a greater number of "withhold" votes than "for" votes for his or her election will submit his or her offer of resignation for consideration by the Board's Nominating and Corporate Governance Committee. As noted in footnote 1 above and discussed below, under this model, there would unlikely ever be a holdover director; hence the Proposal is misleading, because, if implemented, it purports to give stockholders an "important" protection (i.e., the collapsing stagger feature) that would unlikely ever occur.

The Company's "Plurality Plus" Director Election Standard. Pursuant to Article I, Section 1.9 of the Bylaws, the Company's directors are elected by a plurality of votes. Section 1.9 of the Bylaws states, in relevant part, as follows:

Section 1.9. Action at Meeting.

[...] Other than directors who may be elected by the holders of shares of any series of Preferred Stock or pursuant to any resolution or resolutions providing for the issuance of such stock adopted by the Board, each director will be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. [...]

Under such vote standard, director nominees receiving the highest number of affirmative votes are elected, meaning a single vote is sufficient to elect in an uncontested election. Accordingly, the circumstances in which an incumbent director could fail to win re-election but continue to serve on the Board as a "holdover" director are a null set. Only if no votes were cast in favor of the director's re-election could he or she fail to be elected but remain in office as a "holdover" director.

In keeping with good governance practices, the Board has also adopted a director resignation policy in the Company's Corporate Governance Guidelines, which requires any nominee for director who, in an uncontested election, receives more votes "withheld" than "for" for his or her election to offer his or her resignation for consideration by the Nominating and Corporate Governance Committee and subsequently by the Board. Section C.7 of the Corporate Governance Guidelines provides:

7. Director Resignation Policy

It is Etsy's policy that any nominee for director in an uncontested election who receives a greater number of votes "withheld" for his or her election than votes "for" such election shall submit his or her offer of resignation for consideration by the Nominating and Corporate Governance Committee of the Board. The Nominating and Corporate Governance Committee shall consider all of the relevant facts and circumstances and recommend to the Board the action to be taken with respect to such offer of resignation. The Board will then act on the Nominating and Corporate Governance Committee's recommendation as it deems appropriate. Promptly following the Board's decision, Etsy will disclose that decision and an explanation of such decision in filing with the Securities and Exchange Commission or a press release.

However, under this plurality-plus model, Etsy's directors are validly elected to the Board and the resignation policy applies after their election. Again, there would not likely be a director who fails to win re-election, but continues to serve on the Board as a "holdover" director, as the Proposal purports there could be.

The Proposal is materially false or misleading and contrary to Rule 14a-9. By requesting an amendment that would provide that "*when a director in a class fails to win re-election but continues to serve on the Board as a 'holdover' director, then all directors in the 'holdover' director's class must stand for re-election at the next annual meeting of shareholders along with those director nominees in the class scheduled to stand for election at that meeting*" (emphasis added), the Proposal purports to offer stockholders a collapsing stagger feature if the Proposal is approved, but fails to accurately describe the Company's vote standard and that a "holdover director" would unlikely ever occur and hence the stockholders would be voting to support a practically empty feature.

Instead, the Supporting Statement reinforces false or misleading notions that the collapsing stagger amendment in the Proposal protects stockholders. In particular, the last paragraph of the Supporting Statement reads, in relevant part:

"The Proposal is designed to support classified board structures and their positive contribution to long-term board and management strategic planning, while *establishing a collapsing stagger feature that limits the director protection afforded by board classification should "holdover" directors serve on the board.* The classified board with a *collapsing stagger provision* can be an *important new governance formulation* for directors, executives, shareholders, and all corporate stakeholders." (Emphasis added.)

The Proposal and Supporting Statement also omit that the Company already has a director resignation policy in place for nominee directors in uncontested elections who receive more "withheld" votes than "for" votes.

In Staff Legal Bulletin No. 14B (Sep. 15, 2004), the Staff explained that “reliance on rule 14a-8(i)(3) to exclude or modify a statement may be appropriate where...the company demonstrates objectively that a factual statement is materially false or misleading.” Staff precedent indicates that when the premise of a proposal is based on an objectively false or materially misleading statement, total exclusion of the proposal is warranted. *See, e.g., Netgear, Inc.* (Apr. 9, 2021) (concurring with the exclusion of a proposal to amend the company’s bylaws and governing documents to give holders with an aggregate of 15% net long of outstanding common stock the power to call a special shareholder meeting, because the supporting statement was materially false in stating that the company “only allows a majority of the Board, the Chairman of the Board, the Chief Executive Officer or the President to call a special meeting,” suggesting that shareholders have no right to call a special meeting under the company’s existing bylaws when they already have such right); *Ferro Corporation* (Mar. 17, 2015) (concurring with the exclusion of a proposal requesting that the company reincorporate in Delaware based on misstatements of Ohio law, which misstatements improperly suggested that the shareholders would have increased rights if Delaware law governed the company); *General Electric Company* (Jan. 6, 2009) (concurring with the exclusion of a proposal under which any director who received more than 25% in “withheld” votes would not be permitted to serve on any key board committee for two years because the company did not typically allow stockholders to withhold votes in director elections). Here, as discussed above, the Proposal and Supporting Statement state that “*when a director in a class fails to win re-election but continues to serve on the Board as a ‘holdover’ director,*” the collapsing stagger feature will take effect, ignoring the fact that Etsy’s directors are elected by a plurality of the vote, under which there is unlikely to ever be “holdover” directors.

The Proponent’s false or misleading statements are material. A misstated or omitted fact is material if there is a substantial likelihood that a reasonable stockholder would consider it important in deciding how to vote. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). The standard of materiality for purposes of false and misleading statements under Rule 14a-8(i)(3) in a supporting statement was addressed in *Express Scripts Holding Co. v. Chevedden*, 2014 WL 631538, at *4 (E.D. Mo. Feb. 18, 2014). In *Express Scripts*, in the context of a proposal that sought to separate the positions of chief executive officer and chairman, the court ruled that, “when viewed in the context of soliciting votes in favor of a proposed corporate governance measure, statements in the proxy materials regarding the company’s existing corporate governance practices are important to the stockholder’s decision whether to vote in favor of the proposed measure” and therefore are material. *See id.* at *4. Just as in *Express Scripts*, *Netgear* and *Ferro*, the Proposal and Supporting Statement are misleading because they materially misrepresent the Company’s “existing corporate governance practices.” They create the false impression that stockholders would gain a protection that is practically unavailable, as there would likely never be “holdover” directors under the Company’s plurality vote standard and the collapsing stagger feature would unlikely ever apply. Accordingly, the Company believes that the Proposal and Supporting Statement are materially false or misleading in violation of Rule 14a-9 and are excludable from the Proxy Materials.

SLB 14 explained that under Rule 14a-8(i)(3), if the proposal contains specific statements that may be materially false or misleading or irrelevant to the subject matter of the proposal, the Staff may permit the stockholder to revise or delete these statements. Here, as discussed above, the main premise of the Proposal itself is materially false or misleading. Minor or immaterial corrections would not remedy the deficiency, and the entire Proposal and Supporting Statement should be excluded. The Staff should not permit the Proponent to revise the Proposal or the Supporting Statement.

V. Conclusion

By copy of this letter, the Proponent is being notified that for the reasons set forth herein, the Company intends to exclude the Proposal and Supporting Statement from its Proxy Materials. We respectfully request that the Staff concur with our view and not recommend enforcement action if the Company excludes the Proposal and Supporting Statement from its Proxy Materials. If we can be of assistance in this matter, please do not hesitate to contact me at fmi@paulweiss.com or (212) 373-3185.

Sincerely,



Frances Mi

cc: Jill Simeone, Etsy, Inc.
Lynn Horwitz, Etsy, Inc.
Edward Durkin, New York City Carpenters Pension Fund

Attachments

EXHIBIT A

Proponent's Proposal and Supporting Statement

(See attached)

CLASSIFIED BOARD COLLAPSING STAGGER PROPOSAL

Resolved: That the shareholders of Etsy, Inc. request that the Board initiate the appropriate governance process to modify its classified board structure of three classes with three-year terms to add a collapsing stagger feature. The collapsing stagger feature amendment should provide that when a director in a class fails to win re-election but continues to serve on the Board as a “holdover” director, then all directors in the “holdover” director’s class must stand for re-election at the next annual meeting of shareholders along with those director nominees in the class scheduled to stand for election at that meeting.

Supporting Statement: Etsy, Inc. (“Company”) has established a classified board structure in its bylaws that provide that the Company directors shall be divided into three classes and shall elected to staggered terms of three years. Classified boards were popularized decades ago as defensive mechanisms against hostile corporate control events. Today most corporations have an annual election structure for director elections as institutional investors’ concerns about board of director entrenchment have driven board declassification. Today, a declassified board is perceived by most to be a governance best practice.

However, recent empirical studies present compelling new evidence demonstrating that classified boards are associated with “a statistically and economically significant increase in firm value.” (Cremers, Lubomir, Sepe, *Staggered Boards and Long-Term Firm Value, Revisited* (July 25, 2017) <https://ssrn.com/abstract=2364165>). The authors state: “The promotion of long-term projects and optimal stakeholder firm-specific investments are the two main transmission channels through which staggered (classified) boards can positively impact firm value.” Directors facing annual elections are pressured to focus on short-term metrics rather than generating long-term sustainable value. This short-term pressure harms the corporations they oversee as well as numerous important corporate stakeholders, such as employees, communities, and suppliers. The classified board structure can serve a constructive role in today’s investment market as it provides a measure of protection from short-term shareholder and market pressures and their negative effects on corporate value.

We believe that the recent widespread adoption of a majority vote standard in the market creates a governance environment in which a classified board can provide boards and executives latitude to focus on sustainable corporate performance, while still providing a strong measure of board accountability. Shareholders are no longer dependent on “control” or “influence” events in the form of short-slate or full-slate election challenges. Instead, shareholders in uncontested director elections cast legally meaningful votes when elections are governed by a majority vote standard. The Proposal is designed to support classified board structures and their positive contribution to long-term board and management strategic planning, while establishing a collapsing stagger feature that limits the director protection afforded by board classification should “holdover” directors serve on the board. The classified board with a collapsing stagger provision can be an important new governance formulation for directors, executives, shareholders, and all corporate stakeholders.

EXHIBIT B

Delaware Law Opinion

(See attached)

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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January 28, 2022

Etsy, Inc.
117 Adams Street
Brooklyn, NY 11201

Re: Stockholder Proposal Submitted by the New York City Carpenters Pension Fund

Ladies and Gentlemen:

This letter confirms our advice regarding a proposal (the “Proposal”) submitted to Etsy, Inc., a Delaware corporation (the “Company”), by the New York City Carpenters Pension Fund (the “Proponent”) for inclusion in the Company’s proxy materials for its 2022 Annual Meeting of Stockholders (the “2022 Annual Meeting”). For the reasons explained below, it is our opinion that the Proposal would violate Delaware law if it were implemented.

I. The Proposal.

The Proposal addresses the election of directors and their terms of office. Currently, directors are divided into three, staggered classes of the Company’s Board of Directors (the “Board”). Only one class is elected each year. The stockholders elect directors for three-year terms.¹ It is expected that three directors will stand for election in 2022 (for terms expiring in 2025), three directors will stand for election in 2023 (for terms expiring in 2026) and three directors will stand for election in 2024 (for terms expiring in 2027). The Proponent urges the Board to “add a collapsing stagger feature” to this election system:

Resolved: That the shareholders of [the Company] request that the Board initiate the appropriate governance process to modify its classified Board structure of three classes with three-year terms to add a collapsing stagger feature. The collapsing stagger feature amendment should provide that when a director in a class fails to win re-election but continues to serve on the Board as a “holdover” director, then all directors in the “holdover” director’s class must

¹ See the Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) of the Company, Article V.

stand for re-election at the next annual meeting of shareholders along with those director nominees in the class scheduled to stand for election at that meeting.

We use the 2022 Annual Meeting at which Class I directors would be elected and the 2023 Annual Meeting of Stockholders (the “2023 Annual Meeting”) at which Class II directors would be elected to illustrate the effect of the Proposal. Three Class I directors (who currently serve in the 2022 Board class) would stand for re-election at the 2022 Annual Meeting. Under the current Board structure and the Company’s Certificate, if one Class I director is successfully re-elected and the others are not, the successful director would serve a three-year term.² The two directors failing re-election would “holdover” in office until the 2023 Annual Meeting.³ At the 2023 Annual Meeting, the two Class I holdover directors (or their replacements) would stand for re-election to two-year terms, and the three Class II directors in the 2023 Board class would stand for election to three-year terms.

Under the Proposal, the Class I director successfully elected at the 2022 annual meeting would be punished for the failed election of the other “holdover directors.” The successful Class I director would have his or her duly elected term cut short, contrary to the terms of the Company’s Certificate of Incorporation and would be required to stand for re-election with the Class I holdover directors in 2023, along with the three Class II directors in the 2023 Board class.⁴

² We note that, under the Company’s Bylaws, directors are elected by plurality vote. See the Bylaws of the Company, Article I, Section 1.9. Under a plurality voting standard, the nominee who receives the highest number of votes for a directorship is validly elected, even if those votes are less than a majority of the shares entitled to vote, meaning a single vote is sufficient to elect in an uncontested election. Accordingly, the circumstances in which an incumbent director could “fail[] to win re-election but continue[] to serve on the Board as a ‘holdover’ director” are a null set; only if no votes were cast in favor of the director’s re-election could he or she fail to be elected but remain in office as a “holdover” director. The Board has adopted a resignation policy, pursuant to which directors (who have been elected by plurality vote) are expected to offer their resignation if they receive more votes “withheld” than “for” their election, but this policy would result only in a director resigning from a three-year term to which he or she has been duly elected under the plurality voting standard. This resignation policy also does not result in “holdover” directors.

In the remainder of this letter, we address the Proposal on the basis of its terms, and accept the theoretical possibility that a director of the Company could be a “holdover” director, however unlikely that possibility might be.

³ In this example, the holdover director must stand for election in 2023 because he or she has not been elected to a new three-year term. See *North Fork Bancorporation, Inc. v. Toal*, 825 A.2d 860 (Del. Ch. 2000). A stockholder could also petition the Delaware Court of Chancery to order a special meeting, to require an election regarding the holdover director’s seat before the 2023 annual meeting, but the Court is not required to order a special meeting. *Id.* at 871.

⁴ It is unclear under the Proposal whether the directors in Class I would be elected at the 2023 Annual Meeting for two-year terms or three-year terms. In other words, in the example above (where one director is successfully elected, but the other two are not, at the 2022 Annual Meeting), it is unclear whether, at the 2023 Annual Meeting, (i) three directors (from Class I) would be subject to election for two-year terms and three directors (from Class II) would be subject to election for three-year terms, or (ii) six directors (from both Class I and Class II) would be subject to election for three-year terms.

II. Summary Of Analysis.

Section 141(d) of the Delaware General Corporation Law (the “DGCL”) requires that, when directors are divided into three classes, directors *must be elected to full three-year terms*. The Proposal’s “collapsing feature” violates Section 141(d) because the Proposal would result in certain successfully elected directors serving only one-year terms.

In addition, under Section 141(d), directors generally elected by the voting stockholders at large (here, the directors elected by the holders of common stock) *must all be elected to terms of equal length* (that is, equal terms of three years). Section 141(d) permits differential terms (of greater or less than three years) only for directors who are specially elected by separate classes or series of stock (such as preferred stock). Accordingly, the Proposal also violates Section 141(d) because the “collapsing stagger feature” of the Proposal would result in certain directors being elected by the common stockholders to three-year terms, and other directors (in the same class as a holdover director) being elected by common stockholders to one-year terms.

Finally, once a director is successfully elected to a three-year term, his or her term cannot be prematurely terminated by reason of the failed re-election bid of another director. Under Section 141(b) of the DGCL and the cases interpreting it, a director is entitled to serve the entirety of his or her three-year term (that is, until a successor is elected after that full term has expired), unless the director resigns, the director is expressly removed by stockholders, or the director is disqualified from continuing to hold office for failure to satisfy a director qualification provision. These are the exclusive methods to unseat a director. Because the Proposal would shorten the term of a successfully elected director without relying on any of these methods, it would violate Section 141(b) of the DGCL.

III. The Proposal Would Violate Delaware Law If It Were Implemented.

The DGCL does not permit the Proposal’s “collapsing stagger feature.” The DGCL establishes a default rule that all directors are elected to one-year terms, expiring at the next annual meeting of stockholders.⁵ To provide for a staggered board (denoted as a “classified” board in the DGCL), a corporation must follow Section 141(d). The first sentence of Section 141(d) establishes the exclusive means to stagger (classify) the directors who are elected by the stockholders at large:⁶

The directors of any corporation organized under this chapter may, by the certificate of incorporation or by an initial bylaw, or by a bylaw adopted by a vote of the stockholders, be divided into 1, 2 or 3 classes; the term of office of those of the first class to expire at the first annual meeting held after such classification becomes effective; of the second class 1 year thereafter; of the third class 2 years thereafter; *and at each annual election held after such classification*

⁵ See 8 Del. C. § 211(b); *Insituform of North America v. Chandler*, 534 A.2d 257, 266 (Del. Ch. 1987).

⁶ The distinction between directors elected by the stockholders “at large” versus directors elected by separate classes or series of stock is discussed below.

*becomes effective, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.*⁷

Except for the first two inaugural classes of a staggered board, the directors elected by stockholders must be “chosen for a full term” to succeed the directors whose terms have expired.⁸ The Delaware Supreme Court has expressly held that, when a board is divided into three staggered classes, “full term” means a three-year term:

The DGCL, from its initial enactment in 1899, has authorized Delaware corporations to stagger the terms of their boards of directors. Although the statutory language has been amended from time to time, it has remained substantially the same . . . As early as 1917, commentators understood that the staggered board provision contemplates three year director terms.⁹

The Proposal would therefore violate Section 141(d) if it were implemented because directors who are successfully elected to a Board class would serve less than the required “full term” if the class happens to include a holdover director who has not been re-elected.¹⁰

The Proposal would also violate another facet of Section 141(d) by permitting the terms of certain directors to differ from the terms of other directors. The holders of common stock of the Company possess the residual right to vote on all stockholder matters.¹¹ Commentators often refer to directors elected by the common stock as being elected by the stockholders “at large” (i.e., by the stockholders with residual voting power). The terms of directors elected by the stockholders “at large” are governed by the first sentence of Section 141(d), quoted above. Section 141(d) continues, by permitting a corporation to fix (in its certificate of incorporation) different terms for directors that are specially elected by a separate class or series of stock:

⁷ 8 *Del. C.* § 141(d) (emphasis added).

⁸ The Company’s Amended and Restated Certificate of Incorporation has provided for a classified board for more than two years, so the lead-in provisions of Section 141(d) regarding the inaugural two classes no longer apply.

⁹ *Airgas, Inc. v. Air Products & Chemicals, Inc.*, 8 A.3d 1182, 1192 (Del. 2010) (interpreting a certificate of incorporation providing that directors serve for a term “expiring at the annual meeting of stockholders held in the third year following the year of their election” to mean directors were entitled to serve “three year terms”).

¹⁰ Once the polls for voting are closed, no additional votes may be received, absent an order from the Delaware Court of Chancery. 8 *Del. C.* § 231(c) (“No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.”) Accordingly, absent judicial action setting aside a vote, an election is complete, and a director who has received the required vote is elected, at the time the polls close. The presence of a holdover director in the same class as an elected director cannot somehow re-open the polls or interfere with the election of another director.

¹¹ See Amended and Restated Certificate of Incorporation of the Company, Article IV.B.2 (“Each share of Common Stock shall entitle the holder thereof to one (1) vote on each matter submitted to a vote of holders of Common Stock . . .”).

The certificate of incorporation may confer upon holders of any class or series of stock the right to elect 1 or more directors who shall serve for such term, and have such voting powers as shall be stated in the certificate of incorporation. The terms of office and voting powers of the directors elected separately by the holders of any class or series of stock may be greater than or less than those of any other director or class of directors.

In contrast to the directors elected by the stockholders at large, directors specially elected by a separate class or series of stock may have terms and voting powers “greater than or less than those of any other director.” Section 141(d) then continues by providing that the certificate of incorporation may provide *any* director voting powers that differ from the voting powers of other directors:

In addition, the certificate of incorporation may confer upon 1 or more directors, whether or not elected separately by the holders of any class or series of stock, voting powers greater than or less than those of other directors.

This provision authorizes variable *voting power* among directors elected by the stockholders at large, but does not authorize variable *terms* for directors elected by the stockholders at large. The Proposal would therefore violate Delaware law because it would allow the stockholders at large (the holders of common stock) to elect some directors to one-year terms and other directors to three-year terms, depending on whether a director serves in a class with a holdover director. This scheme is not permitted by the DGCL.

For the reasons explained above, the Company’s directors must be elected to full, three-year terms. Once elected to a term, a director’s three-year term cannot be shortened or terminated in the manner contemplated by the Proposal. Section 141(b) of the DGCL, together with the cases interpreting it, set out the means for unseating a director from office before the scheduled expiration of his or her full term. Section 141(b) provides that “[e]ach director shall hold office until such director’s successor is elected and qualified or until such director’s earlier resignation or removal.” Interpreting Section 141(b), the Delaware Court of Chancery observed that the statute:

recognizes three procedural means by which the term of a sitting director can be brought to a close: (1) when the director’s successor is elected and qualified, (2) if the director resigns, or (3) if the director is removed This interpretation of Section 141(b) comports with how [Delaware] law has developed.¹²

¹² *Kurz v. Holbrook*, 989 A.2d 140, 155-56 (Del. Ch. 2010), *aff’d in part, rev’d in part sub nom. Crown EMAK Partners, LLC v. Kurz*, 992 A.2d 377 (Del. 2010) (affirming the part of the Court of Chancery’s decision discussed in this letter).

Later in the same decision, the Court of Chancery stated that Section 141(b) contemplates a fourth means to unseat a director: a director could be disqualified from continuing to hold office by a certificate of incorporation provision setting forth a qualification for directorship that was adopted before the director's election.¹³ The Court of Chancery treated these methods of unseating a director as the *exclusive* means of ending a director's term.¹⁴

The Proposal would cut short a duly elected director's three-year term based on the election results for an entirely different director serving in the same class. This scheme for ending a director's term does not comport with any of the four exclusive means to unseat a director:

- (1) The Proposal does not follow the first means under Section 141(b) to unseat a director: by electing a successor once the current director's term expires. The Delaware Court of Chancery has specifically held that a director cannot be unseated by the election of a successor until the annual meeting at which his or her term is scheduled to expire (here, three years from election because the Board is divided into three staggered classes).¹⁵
- (2) The Proposal does not contemplate that a successfully elected director resign early from his or her three-year term. The Proposal requests that the Company "modify its classified board structure" itself to replace the "three classes with three-year terms" required by the statute with the Proposal's requested alternative "collapsing stagger feature."
- (3) The Proposal does not seek the removal of a successfully elected director from his or her three-year term. The Proposal would purport to unseat directors (who would not be identified when the Proposal is adopted) on future dates (also unknown on the date the Proposal is adopted). Under Section 141(k) of the DGCL, a director may be removed only by a majority of the outstanding stock "then entitled to vote at an election of directors." The only stockholders entitled to vote on the removal of a director are the stockholders as of a date that cannot be more than 60 days before the date

¹³ *Id.* at 157 (citing *Stroud v. Milliken Enters., Inc.*, 585 A.2d 1306, 1308 (Del. Ch. 1988)). The Delaware courts have reasoned that a certificate of incorporation can operate to unseat a director if he or she fails to satisfy a qualification because the directors are elected subject to their continued qualification. The Delaware courts have analogized this type of provision to a resignation because a director takes office with the understanding of how the qualification will operate. *Stroud*, 585 A.2d at 1309.

¹⁴ *Id.* at 156 (noting that a director's death is not expressly recognized as a method of ending a director's term but also noting that because death obviously results in the termination of a director's term, "I . . . do *not* regard the absence of any reference to death in Section 141(b) as implying that the identified means [described by the Court to unseat a director] are *non-exclusive*") (emphasis added).

¹⁵ *Kurz*, 989 A.2d at 160 (holding that a director's term cannot be ended prematurely by "purporting to elect the director's successor early."). The Supreme Court affirmed this holding as well. *Crown EMAK Partners*, 992 A.2d at 401-02 ("[Stockholders] cannot end an incumbent director's term prematurely by purporting to elect the director's successor before the incumbent's term expires.").

of the meeting at which stockholders consider a removal proposal.¹⁶ Accordingly, the Proposal cannot somehow allow for a roving future removal of directors successfully elected to a three-year term.

- (4) The Proposal does not seek to impose a qualification on directors. Under the Proposal, a director would be unseated from his or her term solely because of the failed re-election of a different director holding over in office. The failed election of an entirely different director does not relate to whether the successfully elected director is qualified to hold office.

Our conclusions are not only required by Sections 141(d) and 141(b) of the DGCL but also reach a sensible result. If the stockholders fail to re-elect a single director, for whatever reason, that decision cannot impugn the fitness of another director, who has been duly elected by the stockholders, to serve out the full term envisioned by the statute. Nor can the stockholders' failure to elect one director have the effect of disenfranchising the stockholders' decision to elect the other directors at the same annual meeting.

* * *

¹⁶ 8 *Del. C.* § 213(a) (requiring that the record date fixed to determine stockholders entitled to vote at a stockholder meeting, which would include a meeting called to remove directors, cannot be more than 60 days before the date of the meeting).

Etsy, Inc.
January 28, 2022
Page 8

For all of the foregoing reasons, it is our opinion that the Proposal would violate Delaware law if it were implemented.

Very truly yours,

Moria, Nichols, Arahit & Tunnell LLP

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WRITER'S DIRECT E-MAIL ADDRESS

fmi@paulweiss.com

February 7, 2022

VIA E-MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**Re: Etsy, Inc.
Stockholder Proposal of New York City Carpenters Pension Fund**

Ladies and Gentlemen:

We refer to our letter, dated January 31, 2022, (the "No-Action Request"), pursuant to which we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission concur with our view that Etsy, Inc. (the "Company") may exclude the stockholder proposal (the "Proposal") and supporting statement (the "Supporting Statement") submitted by the New York City Carpenters Pension Fund (the "Proponent") from the proxy materials to be distributed by the Company in connection with its 2022 annual meeting of stockholders.

The Proponent has agreed to withdraw its Proposal and Supporting Statement. Attached hereto as Exhibit A is a withdrawal letter dated February 3, 2022 (the "Withdrawal Letter") from the Proponent to the Company in which the Proponent

*NOT ADMITTED TO THE NEW YORK BAR

voluntarily agrees to withdraw the Proposal. In reliance on the Withdrawal Letter, we hereby withdraw the No-Action Request.

If you should have any questions or need additional information please do not hesitate to contact me at fmi@paulweiss.com or (212) 373-3185.

Sincerely,

A handwritten signature in black ink, appearing to read "Frances Mi". The signature is fluid and cursive, with the first name "Frances" and the last name "Mi" clearly distinguishable.

Frances Mi

cc: Jill Simeone, Etsy, Inc.
Lynn Horwitz, Etsy, Inc.
Edward Durkin, New York City Carpenters Pension Fund

Attachments

EXHIBIT A

Withdrawal Letter

(See attached)

**NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS
BENEFIT FUNDS**

UNION

TRUSTEES

Joseph A. Geiger
Co-Chairman

Paul Capurso
David Caraballoso
Michael P. Cavanaugh
John Sheehy

Kristin O'Brien, LMSW, CEBS
Executive Director

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MANAGEMENT

TRUSTEES

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Co-Chairman

John DeLollis
Kevin O'Callaghan
John O'Hare
Michael Salgo

SENT VIA EMAIL – jsimeone@etsy.com

February 3, 2022

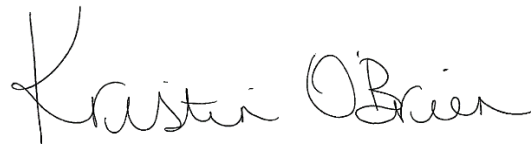
Jill Simeone
Chief Legal Officer and Corporate Secretary
Etsy, Inc.
117 Adams Street
Brooklyn, NY 11201

RE: Shareholder Proposal Withdrawal Letter

Dear Ms. Simeone:

On behalf of the New York City Carpenters Pension Fund ("Fund"), I hereby withdraw the Classified Board shareholder proposal submitted by the Fund on December 15, 2021. As a long-term holder of Etsy, Inc. common stock, we hope to engage in future dialogue with the Company on classified board issue and other important governance topics.

Sincerely,



Kristin O'Brien, LMSW, CEBS
Executive Director

cc. Edward J. Durkin