KING & SPALDING

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February 2, 2024

VIA ONLINE SUBMISSION

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

Re: General Motors
Stockholder Proposal of John Chevedden
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

We are writing on behalf our client, General Motors Company (the "Company"), pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934, as amended, to request that the Staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") concur with our view that, for the reasons stated below, the Company may exclude the shareholder proposal and supporting statement (the "Proposal") submitted by John Chevedden (the "Proponent") from the proxy materials that the Company intends to distribute in connection with the Company's 2024 annual meeting of stockholders (the "2024 Proxy Materials").

In accordance with Rule 14a-8(j), this letter is being submitted no later than eighty (80) calendar days before the Company intends to file the definitive 2024 Proxy Materials.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff's online shareholder proposal submission form. 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 omit the Proposal from the 2024 Proxy Materials. Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008)

require shareholder proponents to send companies a copy of any correspondence that proponents elect to submit to the Commission or the Staff. Accordingly, if the Proponent elects to submit correspondence to the Commission or the Staff with respect to the Proposal, we respectfully request that a copy of that correspondence be concurrently furnished to the undersigned on behalf of the Company.

I. 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 General Motors Company are amended as follows:
>
> Article II is amended by adding this paragraph to the end of the Article:
>
> 2.12 Compensation
>
> The board of directors shall not have any authority to fix the compensation of directors. The compensation of directors the Company pays shall be fixed at $1 in a fiscal year; provided, however, the Company 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 Company 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 Company will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder 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 Company will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Company.

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

II. 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.

III. Analysis

A. The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Implementation of the Proposal Would Cause the Company to Violate Delaware Law

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 the Proposal is properly excludable from the Company's 2024 Proxy Materials under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

1. *Rule 14a-8(i)(2) 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); and *Bank of America Corp.* (avail. Feb. 11, 2009). The Company is incorporated under the laws of the State of Delaware.

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. *See e.g., Bank of America (*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 appointment); *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); and *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).

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, and therefore the Proposal may properly be excluded under Rule 14a-8(i)(2).

2. *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*

The Proposal is a binding resolution that could immediately amend the Bylaws if approved by stockholders. Upon effectiveness, the Bylaw amendment would, among other things, prohibit the Company's Board of Directors from awarding annual compensation to Company directors over $1 unless, among other requirements, such compensation is approved by a "majority of stockholder 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."

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.

The Proposal, which requires that the majority approval "shall include only stockholder votes of stockholders that are not directors of the Company", 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." While Section 141(h) of the DGCL allows for restrictions on director compensation in Bylaws, the restriction itself must be lawful. The restriction urged by the Proponent is not lawful because it imposes a stockholder vote that excludes directors who own shares. This Proposal also differs from a separate governance practice, where a Board of Directors first authorizes director compensation and then the Board voluntarily seeks a ratification of the compensation by a stockholder vote that excludes directors. The ratification vote is intended to ensure that the compensation is not challenged by stockholders. *See In re Investors Bancorp, Inc. Stockholder Litigation*, 177 A.3d 1208 (Del. 2017) (holding that compensation ratified by non-director stockholders may not be challenged as unfair by a stockholder). As noted in the Delaware Law Opinion (at note 4), the Proposal's

voting requirement is not a voluntary ratification of compensation and is instead an authorization vote that must be obtained before the Board can award compensation over $1.00. An authorization vote cannot exclude shares held by directors for the reasons explained in the Delaware Law Opinion and as described below.

In addition, 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. Under Section 212(a) of the Delaware General Corporation Law (the "DGCL"), unless otherwise provided in the *certificate of incorporation*, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. As 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 (the "Certificate") 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." And further, the Delaware Law Opinion goes on to highlight that "[i]n 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."

The Staff has consistently permitted the exclusion of a shareholder proposal that would cause a company to violate the "one vote for every share" rule under applicable state law. In *Quotient Technology Inc* (May 6, 2022), the Staff allowed the exclusion of a proposal requesting that the board of directors disqualify all shares owned and/or controlled by both current and former named executive officers from voting to approve a proposed tax benefits preservation plan. The company argued that the adoption of that proposal would cause the company to violate Section 212(a) of the DGCL by depriving the relevant officers of their right to "one vote for every share" – the same argument set forth in the Delaware Law Opinion. *See also, eBay Inc.* (Apr. 1, 2020) (permitting the exclusion of a proposal requesting that the company allow employees to elect a specified percentage of the board, which similarly would have required the company to violate Section 212(a) of the DGCL by causing shareholders to no longer have one vote for each share); and *Dominion Resources, Inc.* (Jan. 14, 2015) (concurring with the exclusion of a proposal that requested a director be appointed by the board without a shareholder vote in violation of the one vote for each share rule under Virginia law).

Here, the Proposal would result in a binding Bylaw amendment that would similarly disqualify a subset of stockholders from voting on a specific matter. As in *Quotient Technology*, the Company's 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, 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.

B. The Proposal May Be Excluded Under Rule 14a-8(i)(6) Because the Company Lacks the Power and Authority to Implement the Proposal

We believe the Proposal is properly excludable from the Company's 2024 Proxy Materials under Rule 14a-8(i)(6) because the Company lacks the power and authority to implement a proposal that would violate Delaware law.

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." On numerous occasions, the Staff has permitted exclusion of proposals under Rule 14a-8(i)(6) that would cause a company to violate the law of the jurisdiction of its incorporation. *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); and *NiSource Inc.* (avail. Mar. 22, 2010).

As discussed above and in the Delaware Law Opinion, the Company cannot implement the Proposal's binding Bylaw amendment to divest director stockholders of their voting rights without violating Section 212(a) because the Certificate does not contain a provision opting out of the "one vote for every share right." The Delaware Law Opinion states 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.

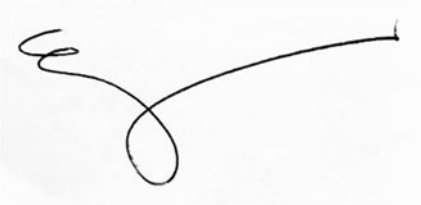
Therefore, the Company lacks the power and authority under Delaware law to implement the Proposal, and, consistent with the precedents cited above, the Proposal is excludable under Rule 14a-8(i)(6).

IV. 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 emorgan@kslaw.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 556-2351 or the Company's Assistant Corporate Secretary and Lead Counsel – Corporate Governance, Finance, and Securities, John Kim, at (313) 573-0101.

Very truly yours,



Elizabeth A. Morgan

Enclosures

cc: John Kim, General Motors Company
John Chevedden

EXHIBIT A

Rachel Wood

From: Patrick Foley
Sent: Tuesday, January 2, 2024 9:21 AM
To: John Chevedden
Cc: Scott Cross; John Kim; Rachel Wood
Subject: RE: [EXTERNAL] Rule 14a-8 Proposal (GM)

Received. Thank you.

-Patrick

Patrick M. Foley (he/him)
Counsel – Securities
patrick.m.foley@gm.com +1 (248) 765-2560

From: John Chevedden [redacted]
Sent: Friday, December 29, 2023 9:18 PM
To: Patrick Foley <patrick.m.foley@gm.com>; Scott Cross <scott.cross@gm.com>; John Kim <john.s.kim@gm.com>; Kris Miller <kristan.miller@gm.com>
Subject: [EXTERNAL] Rule 14a-8 Proposal (GM)

Rule 14a-8 Proposal (GM)

Dear Mr. Foley,
Please see the attached rule 14a-8 proposal.
Please confirm that this is 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.

Hard copies of any request related to this proposal are not needed as long as you request that I confirm receipt in the email cover message.

The proponent is available for a telephone meeting on the first Monday and Tuesday after 10-days of the proposal submittal date at noon PT. Please arrange in advance in a separate email message regarding a meeting if needed.
John Chevedden

JOHN CHEVEDDEN
PII

Ms. Ann Cathcart Chaplin
Corporate Secretary
General Motors Company (GM)
300 Renaissance Center
Detroit, MI 48265-3000
PH: 313-667-1500

Dear Ms. Chaplin,

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 PII
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,

John Chevedden

December 29, 2023
Date

cc: Patrick Foley <patrick.m.foley@gm.com>
Scott Cross <scott.cross@gm.com>
John Kim <john.s.kim@gm.com>
Kristan Miller <kristan.miller@gm.com>

[GM: Rule 14a-8 Proposal, December 29, 2023]
[This line and any line above it – *Not* for publication.]

Proposal 4 – Bylaw Amendment: Stockholder Approval of Director Compensation

The Bylaws of General Motors Company are amended as follows:

Article II is amended by adding this paragraph to the end of the Article:

2.12 Compensation
The board of directors shall not have any authority to fix the compensation of directors. The compensation of directors the Company pays shall be fixed at $1 in a fiscal year; provided, however, the Company 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 Company 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 Company will pay, grant, or award such disclosed compensation; and (3) approved by a majority of stockholder 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 Company will pay, grant, or award such compensation, which majority shall include only stockholder votes of stockholders that are not directors of the Company.

Supporting statement

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

Stockholders want and need authority over how and how much GM compensates directors. If stockholders approve compensation, then directors have the greatest incentive to work in the sole interest of stockholders. 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. Stock owned by directors will not count in the vote, so the vote result represents the independent views of stockholders.

I urge stockholders 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]

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.

Rachel Wood

From: Patrick Foley
Sent: Thursday, January 4, 2024 11:04 AM
To: John Chevedden
Cc: Scott Cross; John Kim; Rachel Wood
Subject: RE: [EXTERNAL] Rule 14a-8 Broker Letter (GM)

Received. Thank you.

Patrick M. Foley (he/him)
Counsel – Securities
patrick.m.foley@gm.com +1 (248) 765-2560

From: John Chevedden [redacted]
Sent: Thursday, January 4, 2024 12:32 AM
To: Patrick Foley <patrick.m.foley@gm.com>; Scott Cross <scott.cross@gm.com>; John Kim <john.s.kim@gm.com>; Rachel Wood <rachel.1.wood@gm.com>
Subject: [EXTERNAL] Rule 14a-8 Broker Letter (GM)

Rule 14a-8 Broker Letter (GM)

Personal Investing

P.O. Box 770001
Cincinnati, OH 45277-0045

Fidelity INVESTMENTS

JOHN R CHEVEDDEN
[redacted]
PII

January 02, 2024

Dear John Chevedden:

This letter is provided as the request of John R. Chevedden, a customer of Fidelity investments.

Please accept this letter as confirmation that as of December 29, 2023, John R. Chevedden has continuously owned no fewer than the shares quantities of the securities shown in the table below since at least November 20, 2020:

Security	Symbol	Share Quantity
Mastercard Incorporated	MA	10.000
Best Buy Co., Inc.	BBY	50.000
Target Corporation	TGT	60.000
First Solar, Inc.	FSLR	60.000
General Motors Company	GM	100.000
Caterpillar Inc.	CAT	25.000

These securities are registered in the name of National Financial Services LLC, a DTC participant (DTC number 0226) a Fidelity Investments subsidiary.

I hope you find this information helpful. If you have any questions regarding this issue or general inquiries regarding your account, please contact a Fidelity representative for assistance at 800-544-5704.

Sincerely,

Justin Hoang
Personal Investing Operations

Our File: W337892-02JAN24

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

February 2, 2024

General Motors Company
300 Renaissance Center
Detroit, MI 48265

RE: Stockholder Proposal Submitted by John Chevedden

Ladies and Gentlemen:

This letter confirms our opinion regarding a stockholder proposal (the "Proposal") submitted to General Motors Company, a Delaware corporation (the "Company"), by John Chevedden (the "Proponent") for inclusion in the Company'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 Company 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 Company's Bylaws. The amendment would prohibit the Company'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 Company.[1]

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[1] The Proposal provides:

> The Bylaws of General Motors Company are amended as follows: / Article II is amended by adding this paragraph to the end of the Article: / 2.12 Compensation / The board of directors shall not have any authority to fix the compensation of directors. The compensation of directors the Company pays shall be fixed at $1 in a fiscal year; provided, however, the Company 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 Company 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 Company 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.

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 Company 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 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.

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 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.[3]

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[2] 8 *Del. C.* § 212(a).

[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

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 Company'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 Company in a manner expressly prohibited by Delaware law. Accordingly, it is our opinion that implementation of the Proposal would cause the Company 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

17623992

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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).