



DIVISION OF
CORPORATION FINANCE

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

February 15, 2024

Paul Hilton
Hogan Lovells US LLP

Re: Garmin Ltd. (the "Company")
Incoming letter dated February 14, 2024

Dear Paul Hilton:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Louise Davis (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 Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 19, 2024 request for a no-action letter from the Division.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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Meredith Benton
Whistle Stop Capital



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January 19, 2024

VIA ONLINE SHAREHOLDER PROPOSAL PORTAL

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

Re: Garmin Ltd.
Shareholder Proposal Submitted on behalf of Louise Davis

Dear Ladies and Gentlemen:

On behalf of Garmin Ltd. (“*Garmin*” or the “*Company*”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 to notify the Securities and Exchange Commission (the “*Commission*”) of Garmin’s intention to exclude from the proxy materials for its 2024 annual general meeting of shareholders (the “*2024 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) submitted to the Company by Nia Impact Capital on behalf of Louise Davis (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend to the Commission that enforcement action be taken if Garmin omits the Proposal from its 2024 Proxy Materials for the reasons discussed below.

A copy of the Proposal is attached hereto as Exhibit A.

In accordance with relevant Staff guidance, we are submitting this letter and its attachments to the Staff through the Staff’s online shareholder proposal portal. Pursuant to Rule 14a-8(j), a copy of this letter and its exhibits also is being sent to the Proponent. Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that a proponent is required to send the company a copy of any correspondence which the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent should concurrently furnish a copy of that correspondence to the undersigned by e-mail.

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (Oct. 18, 2011), we ask that the Staff provide its response to this request to the undersigned via e-mail at the address noted in the last paragraph of this letter.

Garmin currently intends to file its definitive 2024 Proxy Materials with the Commission more than 80 days after the date of this letter.

THE PROPOSAL

On December 27, 2023, Garmin received a letter submitting the Proposal for inclusion in the Company's 2024 Proxy Materials. The Proposal sets forth the following resolution:

RESOLVED:

Shareholders request that Garmin Ltd. ("Garmin") report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity.

BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, Garmin believes that it may omit the Proposal from its 2024 Proxy Materials in reliance on:

- Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under Swiss law; and
- Rule 14a-8(i)(2) because the Proposal would cause Garmin to violate Swiss law.

I. Rule 14a-8(i)(1) – The Proposal is Not a Proper Subject for Action by Shareholders Under Swiss Law

Under Rule 14a-8(i)(1), a shareholder proposal may be excluded from a company's proxy materials if the proposal is "not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." For the reasons set forth below and more fully articulated in the legal opinion from the Swiss law firm, Homburger AG, attached to this letter as Exhibit B (the "*Homburger Opinion*"), the Company believes the Proposal may be excluded because it is not a proper subject for action by shareholders under Swiss law. However, Swiss law provides a robust process for shareholders to request the type of information that is the subject of the Proposal. This process is discussed in more detail below.

Garmin is a Swiss corporation formed and organized under the Swiss Code of Obligations. As more fully discussed in the Homburger Opinion, Swiss corporate law is distinct from the corporate law of U.S. jurisdictions in that it limits the matters on which shareholders may act at a general meeting of shareholders. The Swiss Federal Supreme Court has held that a shareholder may request that an item be included on the agenda of a general meeting of shareholders only if the matter on which the shareholders are to vote falls within the “competence” of the shareholders at a general meeting. For other matters that fall within the exclusive or “non-transferable and inalienable” competence of the board of directors, it is not possible for shareholders to adopt a legally valid resolution, and shareholders do not have a right to request the item be included on the agenda of a general meeting of shareholders.

The Swiss Code of Obligations and the Swiss Federal Law on Merger, Demerger, Conversion and Transfer of Assets and Liabilities provide that shareholders are competent to act upon only the following matters:

- (a) adoption and amendment of the company’s articles of association;
- (b) election and dismissal of members of the board of directors, the chair of the board of directors, the members of the compensation committee of the board of directors, and the auditors;
- (c) approval of the annual management report and the consolidated financial statements;
- (d) approval of the annual financial statements and determination of the allocation of profit shown on the balance sheet, in particular to determine dividends, directors’ shares in profit and voluntary reserves;
- (e) approval of an interim dividend and the interim balance sheet required for this purpose;
- (f) repayment of the statutory capital contribution reserves;
- (g) discharge from liability to the members of the board of directors;
- (h) approval of the maximum aggregate compensation of the board of directors, the executive management, and the advisory board;
- (i) election of the independent voting rights representative;
- (j) approval of the delisting of the shares of the corporation; and

- (k) adoption of resolutions on matters that are reserved to the shareholders' meeting by law or the articles of the association, specifically statutory mergers or demergers; share and participation capital-related matters; the issuance of non-voting stock; the appointment of a special investigator; liquidation or dissolution of the company and matters related thereto; and approval, in advisory votes, of the compensation report and the non-financial matter report of the company.

Garmin's articles of association mirror this list and do not expand the topics upon which shareholders may act at a general meeting.

The Company's employment practices and diversity, equity and inclusion efforts are not within the "competence" of the shareholders at a general meeting or even tangential to the matters considered within the "competence" of the shareholders at a general meeting. Accordingly, Garmin's shareholders do not have the authority to resolve on the subject matter of the Proposal at the general meeting, and the Proposal is not a proper subject for action by shareholders under Swiss law.

Swiss law provides an alternative process for shareholders to request the type of information that is the subject of the Proposal. A shareholder such as the Proponent may attend a company's general meeting of shareholders, in person or by proxy, and request that the board of directors provide information that is relevant to the exercise of shareholders rights. The requirement that the information be relevant to the exercise of shareholders rights is interpreted broadly. In order to exercise this information right, the shareholder must be a shareholder of record or hold a legal proxy from a shareholder of record, in each case as of the record date for the general meeting. The ownership of one share is sufficient to invoke the right. The board of directors is then required to provide the requested information to the shareholder at the general meeting of shareholders or, at the latest, within four months after the general meeting, provided that no trade secrets or other proprietary interests of the company are compromised. The board's response to the request for information must also be made available for inspection by shareholders at the next general meeting. The right to information under the Swiss Code of Obligations is mandatory and cannot be limited by a company's articles of association.

The Swiss Code of Obligations accordingly limits the matters on which shareholders can act at general meetings of shareholders but provides shareholders broad access to information about the company through a process that is greatly simplified and more comprehensive compared to the books and records requests available in most U.S. jurisdiction. This approach reflects the concept of parity under Swiss law, balancing the robust managerial powers of the board of directors against the expansive right of shareholders to monitor the actions of the board and, if necessary, replace the board of directors. Inclusion of the Proposal in Garmin's 2024 Proxy Materials would upset this balance contrary to Swiss law, and the Proposal consequently is not a proper subject for action by shareholders under Swiss law.

II. Rule 14a-8(i)(2) – The Proposal Would Require the Company to Violate Swiss Law

Rule 14a-8(i)(2) permits a company to exclude a proposal if its implementation would cause the company to violate state, federal or foreign law applicable to the company. As the Homburger Opinion explains, the Proposal would, if adopted and implemented, impermissibly infringe on the managerial authority of Garmin’s board of directors to determine Garmin’s employment practices and implementation of Garmin’s diversity, equity and inclusion efforts.

Swiss law reserves to the board of directors the authority to manage matters that are within the “non-transferable and inalienable” competence of the board of directors. As discussed in the Homburger Opinion, the determination of a company’s diversity, equity and inclusion efforts, and the measurement of its performance with respect thereto, are considered “non-transferable and inalienable” responsibilities of the board of directors under Swiss law and are within the full and exclusive authority of the board of directors. The board of directors may not delegate any such exclusive powers to any other corporate body, including the general meeting of shareholders, nor may the shareholders interfere with the responsibility of the board of directors in fulfilling its duties under such matters, by giving instructions to the board of directors. The Proposal would constitute instructions to Garmin’s board of directors in violation of this prohibition. Accordingly, the Proposal would impermissibly infringe on the board’s managerial authority and cause Garmin to violate Swiss law.

CONCLUSION

For the reasons discussed above, the Company believes that it may omit the Proposal from its 2024 Proxy Materials. We respectfully request the Staff’s concurrence with the Company’s view or, alternatively, confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2024 Proxy Materials.

Office of Chief Counsel
Division of Corporation Finance
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January 19, 2024
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If you have any questions or need additional information, please feel free to contact me at (303) 454-2449. When a written response to this letter is available, I would appreciate your sending it to me by e-mail at david.crandall@hoganlovells.com.

Sincerely,



David Crandall

Enclosures

cc: Andrew Etkind, Garmin Ltd.
Louise Davis
Kristin Hull, Nia Impact Capital
Paloma Mate-Kodjo, Nia Impact Capital
Meredith Benton, Whistle Stop Capital

Exhibit A

Copy of the Proposal and Related Correspondence

12/27/2023

Via registered, certified, or express mail

Andrew R. Etkind
Vice President, General Counsel and Secretary
Garmin Ltd.
Mühlentalstrasse 2, 8200
Schaffhausen, Switzerland

Attn: Corporate Secretary

Re: Shareholder proposal for 2024 Annual Shareholder Meeting

Dear Mr. Etkind,

Nia Impact Capital is submitting the attached proposal (the "Proposal") on behalf of Louise Davis ("Proponent") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Garmin Ltd. (the "Company") for its 2024 annual meeting of shareholders.

A letter from the Proponent authorizing Nia Impact Capital to act on its behalf is enclosed. The Proponent is available for a meeting with the company regarding this shareholder proposal at the following days/times: January 10 from 10:30-11:00am CT, or January 12 from 1:00-1:30pm CT.

The Proponent is designating Nia Impact Capital as a representative for all issues in this matter. Meredith Benton ([REDACTED]) is the contact person on behalf of Nia Impact Capital. Please also send all correspondence regarding this proposal to Paloma Mate-Kodjo at [REDACTED].

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We look forward to a discussion of this issue and are hopeful that such a discussion might address the Proponent's concerns.

Sincerely,



Kristin Hull
Founder, Chief Investment Officer

RESOLVED:

Shareholders request that Garmin Ltd. (“Garmin”) report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity.

SUPPORTING STATEMENT:

Quantitative data is sought so that investors can assess and compare the effectiveness of companies' diversity, equity, and inclusion programs.

It is advised that this content be provided through Garmin's existing sustainability reporting infrastructure. An independent report specific to this topic is not requested.

WHEREAS:

More than half of the S&P 500 and over one-third of the Russell 1000 have released, or have committed to release, their consolidated EEO-1 forms, a best practice in diversity data reporting. Companies that release, or have committed to release, more inclusion data than Garmin include: Salesforce, Microsoft, Texas Instruments, and Raytheon Technologies.

As You Sow and Whistle Stop Capital released research in November 2023 that reviewed the EEO-1 reports of 1,641 companies against financial performance metrics from 2016-2021.¹ Within the information technology sector, statistically significant positive correlations were found between increased manager diversity and free cash flow, income after tax five year compound annual growth rate, net profit margin, return on equity, and return on invested capital.

As of the date of the filing of this proposal, Garmin had not yet released its consolidated EEO-1 form, nor had it shared sufficient hiring, retention, or promotion data to allow investors to determine the effectiveness of its diversity and inclusion programs.

As detailed below, inclusion indicators are also important in assessing Garmin's workplace equity efforts and if the company will be able to successfully build, utilize, and maintain a diverse management team.

Hiring: Studies conducted by the University of Chicago and UC Berkeley found that “discriminating companies tend to be less profitable,” stating “it is costly for firms to discriminate against productive workers.”²

Promotion: Without equitable promotional practices, companies will be unable to build the necessary employee pipelines for diverse management. Women and employees of color experience “a broken rung” in their careers; for every 100 men who are promoted, only 87 women are. Whereas women of color comprise 18 percent of the entry-level workforce and only 6 percent of executives.³

¹ <https://www.asyousow.org/report-page/2023-positive-relationships-linking-workforce-diversity-and-financial-performance>

² <https://www.nytimes.com/2021/07/29/business/economy/hiring-racial-discrimination.html>

³ <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>

Retention: Retention rates indicate if employees believe a company represents their best opportunity. Morgan Stanley has found that employee retention above industry average can indicate a competitive advantage and higher levels of future profitability.⁴

⁴ https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf, p. 2

12/27/2023

Kristin Hull
Founder and Chief Investment Officer
Nia Impact Capital
1212 Preservation Parkway Suite 200
Oakland, California, 94612

Re: Authorization to file shareholder resolution

Dear Kristin Hull,

The undersigned ("Stockholder") authorizes Nia Impact capital to file a shareholder resolution on Stockholder's behalf with Garmin Ltd. for inclusion in the Company's 2024 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The resolution at issue related to the below:

Stockholder: Louise Davis

Company: Garmin Ltd.

Subject: Greater Disclosure of Material Corporate Diversity, Equity, and Inclusion Data

The Stockholder has continuously owned an amount of Company stock, with voting rights, for the requisite duration of time that enable the Stockholder to file a shareholder resolution for inclusion in the Company's proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company's annual meeting in 2024.

The Stockholder gives Nia Impact Capital the authority to address, on the Stockholder's behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing the Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder resolution, presenting the proposal at the Company's annual general meeting, and all other forms of representation necessary in moving the resolution.

The Stockholder understands that the Stockholder's name and contact information will be disclosed in the proposal. The Stockholder acknowledges that their name may appear on the company's proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder's name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available to meet with the Company no less than 10 calendar days, nor more than 30 calendar days, after the submission of the shareholder proposal within the regular business hours of Company's principal executive offices. The Stockholder authorizes its representative, Nia Impact Capital, to provide specific dates and times of availability.

The Stockholder can be contacted at the following email address to schedule a dialogue:
[REDACTED]. Any correspondence regarding meeting dates must also be sent to
the Stockholder's representative at [REDACTED] and
[REDACTED].

The Stockholder also authorizes Nia Impact Capital to send a letter of support of the resolution
on the Stockholder's behalf.

Sincerely,

Louise Davis
President of the PRBB Foundation

Exhibit B

Copy of the Opinion of Homburger AG

Garmin Ltd.
Andrew Etkind
Vice President, General Counsel
and Corporate Secretary
Mühlenstrasse 2
8200 Schaffhausen
Switzerland

Homburger AG
Prime Tower
Hardstrasse 201
CH-8005 Zürich

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January 19, 2024

**Garmin Ltd.
Shareholder Proposal Submitted on Behalf of Louise Davis for a Vote by Shareholders
Swiss Legal Opinion**

- 1 We have served as legal counsel to Garmin Ltd. (**Garmin** or the **Company**), a Swiss corporation (*Aktiengesellschaft*) formed and organized under article 620 et seq. of the Swiss Code of Obligations (**CO**). Garmin's registered office is at Mühlenstrasse 2, 8200 Schaffhausen, Switzerland, and its shares are listed on the New York Stock Exchange. Garmin has asked us to provide it with our opinion on whether a proposal submitted by Nia Impact Capital on behalf of Louise Davis for a vote by shareholders (the **Proponent**) on December 28, 2023 (the **Proposal**) constitutes a valid subject for shareholder action under Swiss law. The Proponent has requested that the Proposal be included on the agenda of the Company's annual general meeting of shareholders in 2024 (the **Annual General Meeting**).
- 2 For purposes of our opinion, we have received instructions solely from Garmin and have reviewed only (i) the Company's articles of association dated June 9, 2023 (the **AoA**), and (ii) the Proposal, which the Proponent sent to Garmin by letter dated December 27, 2023. We have assumed that these documents are genuine, complete, and up-to-date as of the date of this opinion letter.
- 3 The Proposal is being made pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, and not under Swiss law, which requires that a shareholder making a shareholder proposal be registered in the Company's share register and hold at least 0.5% of the Company's issued share capital.
- 4 The opinions expressed in this letter are limited to matters governed by the substantive laws of Switzerland as of the date hereof, without regard to conflicts of law principles that would result

in the application of a law other than Swiss law. In particular, without limitation to the foregoing, we have not examined the laws of the United States of America, any state thereof or any other jurisdiction and therefore do not express or imply any opinion with respect thereto.

- 5 In this opinion, Swiss legal concepts are expressed in English terms and not in their original language. These concepts may not be identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions.

1. The Proposal

- 6 The Proposal reads as follows: "RESOLVED - Shareholders request that Garmin report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The report should be done at reasonable expense, exclude proprietary information, and provide transparency on outcomes, using quantitative metrics for workforce diversity, hiring, promotion, and retention of employees, including data by gender, race, and ethnicity."

2. Discussion

2.1 The Proposal and the shareholder resolution to be adopted thereon are not a proper subject for shareholder action under Swiss law

2.1.1 Preliminary remarks

- 7 According to long-standing court practice and prevailing Swiss doctrine, a persuasive authority under Swiss law, the general meeting of shareholders and the board of directors of a company do not have a hierarchical power structure, but each has separate and distinct responsibilities for which they are solely competent (so-called "parity concept").¹

- 8 Under Swiss law, it must therefore be determined whether the Proposal falls within the competence of the general meeting of shareholders (based on the statutory default rules or based on Garmin's AoA), and whether the content of the Proposal falls within the exclusive competence of Garmin's board of directors (the **Board**).

2.1.2 The Company's general meeting of shareholders is not competent under statutory Swiss law and the AoA to resolve on the Proposal

- 9 The general meeting of shareholders has the following competences:²

- (a) to adopt and amend the articles of association;
- (b) to elect and dismiss the members of the board of directors, the chair of the board of directors, the members of the compensation committee of the board of directors, and the auditors;
- (c) to approve the annual management report and the consolidated financial statements;

¹ PETER BÖCKLI, *Schweizer Aktienrecht*, 5th ed., Zurich 2022, § 8 no. 5 *et seq.*; DIETER DUBS/ROLAND TRUFFER, in: Nedim Peter Vogt/Rolf Watter (eds.), *Basler Kommentar, OR II*, 6th ed., Basel 2024, art. 698 no. 9 *et seq.*; FORSTMOSER PETER/MEIER-HAYOZ ARTHUR/NOBEL PETER., *Schweizerisches Aktienrecht*, Bern 1996, § 20 no. 9 *et seq.*

² Article 698(2) of the CO and the statutory bases specifically indicated below.

- (d) to approve the annual financial statements and to determine the allocation of profit shown on the balance sheet, in particular to determine dividends, directors' shares in profit and voluntary reserves;
- (e) to approve an interim dividend and the interim balance sheet required for this purpose;
- (f) to resolve on the repayment of the statutory capital contribution reserves;
- (g) to grant discharge from liability to the members of the board of directors;
- (h) to approve the maximum aggregate compensation of the board of directors, the executive management, and the advisory board;
- (i) to elect the independent voting rights representative;
- (j) to approve the delisting of the shares of the corporation; and
- (k) to adopt resolutions on matters that are reserved to the shareholders' meeting by law or the articles of the association, i.e., statutory mergers or demergers, share and participation capital-related matters, the issuance of non-voting stock, the appointment of a special investigator, liquidation or dissolution of the company and matters related thereto, or to approve, in advisory votes, the compensation report and the non-financial matter report of the Company.³

10 There are no other matters for which there is a statutory competence of the general meeting of shareholders.

11 Article 12 of Garmin's AoA largely mirrors, and does not expand upon, the aforementioned statutory competences of the general meeting of shareholders. The AoA do not provide shareholders with the right to require the Board to report on certain matters by shareholder resolution and, under the "parity concept" discussed above, they could not do so.

12 As a preliminary conclusion, therefore, Garmin's general meeting of shareholders does not have the authority to vote on the Proposal under either applicable statutory law or the AoA.

2.1.3 The Proposal infringes upon the "non-transferable and inalienable" responsibilities of the Board

13 Pursuant to article 699b(1) and (2) of the CO, shareholders holding at least 0.5% of the share capital or voting rights may request that an item be included on the agenda of a general meeting of shareholders.⁴

14 From a substantive perspective, the Swiss Federal Supreme Court has held⁵ that a shareholder may request that an item be included on the agenda of a general meeting of shareholders only if:

³ Articles 621(3), 653(1), 653j(1), 673 para. 1, 697c, 698 para. 2 no. 9, 735 and 736(1) no. 2, 740 and 743 para. 4 of the CO, and article 18(1) of the Federal Law on Merger, Demerger, Conversion and Transfer of Assets and Liabilities.

⁴ Article 699b(1) and (2) of the CO.

⁵ Decision of the Swiss Federal Supreme Court of October 13, 2011 (BGE 137 III 503), consideration 4.1.

- a. the matter on which the shareholders are to vote falls within the "competence" of the general meeting; and
 - b. it is therefore possible for the shareholders to adopt a legally valid resolution.
- 15 As explained above, the general meeting does not have the authority to resolve on the subject matter of the Proposal. With respect to the second prong of the Federal Supreme Court's test, the Swiss Federal Supreme Court has held that this would not be the case if the general meeting of shareholders were asked to decide on a matter that "undoubtedly" falls within the exclusive or "non-transferable and inalienable"⁶ competence of the board of directors pursuant to article 716a(1) of the CO.
- 16 As a general rule, the board of directors may, by default, exercise all powers that are not assigned to other corporate bodies by law or by the articles of association.⁷ In addition, the following powers and duties are "inalienable and non-delegable:"⁸
- (a) The ultimate direction of the company and issuance of the required instructions;
 - (b) the determination of the organization of the company;
 - (c) the organization of accounting, financial control, and financial planning;
 - (d) the appointment and removal of the persons entrusted with the management ("executive management") and individuals with signatory rights for the company;
 - (e) the ultimate supervision of the persons entrusted with management duties, in particular with regard to compliance with applicable laws, the articles of association, organizational regulations, and directives;
 - (f) the preparation of the business report (and for listed companies, the compensation report);
 - (g) the organization of the shareholders' meeting and implementation of its resolutions; and
 - (h) the filing of a request for a moratorium and notification of the court if the company is over-indebted (*i.e.*, if its liabilities exceed its assets).
- 17 Article 27 of the AoA reflects these statutory "non-transferable and inalienable" responsibilities of the Board, and article 27(4) of the AoA provides that the Board "may resolve on all matters not reserved or assigned to the general meeting of the shareholders or another corporate body of the Company by law, the AoA or other internal rules and regulations."
- 18 With respect to the above matters, the board of directors has full and exclusive authority, subject to compliance with applicable laws and regulations.⁹ Furthermore, based on the Swiss statutory principle that each corporate body has certain exclusive powers ("parity concept"),¹⁰ the board of directors may not delegate any such exclusive powers to any other corporate body, including the general meeting, nor may the shareholders interfere with the responsibility of the

⁶ Legal writing has in addition taken the position that shareholders cannot vote on matters delegated by shareholders to the board of directors. The aforementioned Swiss Federal Supreme Court case did not address this issue.

⁷ BSK OR II-WATTER/ROTH PELLANDA, art. 716 no. 1.

⁸ Article 716a(1) of the CO.

⁹ Article 716a(1) of the CO.

¹⁰ See no. 9 above.

board of directors in fulfilling its duties under article 716a CO, e.g., by giving instructions to the Board or amending the AoA.¹¹

- 19 With respect to the Proposal, we are of the view that its subject matter falls within the "non-transferable and inalienable" responsibilities of the Board, in particular the responsibility for "the ultimate direction of the company and issuance of the required instructions".¹² According to established doctrine,¹³ this responsibility includes the determination of the company's strategy and policies and the means by which the strategy and policies are to be implemented.¹⁴ The determination of the company's diversity, equity and inclusion efforts, and the measurement of its performance with respect thereto, are undoubtedly "non-transferable and inalienable" responsibilities of the board of directors, and according to established doctrine, shareholders cannot, without improperly infringing on one of the "non-transferable and inalienable" responsibilities of the board of directors, provide the board of directors with a binding mandate. The shareholder resolution requested by the Proponent would, by its plain terms, be binding on the Company if approved by shareholders.
- 20 We note that under Swiss law, shareholders do have individual information rights. However, the instrument provided by Swiss law for this purpose is not the right to submit shareholder proposals pursuant to article 699b(1) and (2) of the CO, as relied upon by the Proponent, but the right to request information from the board of directors regarding the affairs of the company pursuant to article 697(1) of the CO.¹⁵ Unlike the right under article 699b(1) and (2) of the CO, a shareholder's right to information is not exercised by requesting the inclusion of an item on the agenda of a general meeting and a shareholder vote at such general meeting. Instead, the shareholder seeking the information must attend the company's general meeting of shareholders (in person or by proxy) and, at that meeting, request that the board of directors provide the relevant information. In order to exercise this information right, the shareholder must be a shareholder of record or hold a legal proxy from a shareholder of record (in each case as of the record date for the general meeting); however, the shareholder need not hold a minimum number of shares. The ownership of one share is sufficient. The board of directors is then required to provide such information to the respective shareholder at the general meeting of shareholders or, at the latest, within four months after the general meeting, provided that such information is relevant to the exercise of shareholders rights and provided that no trade secrets or other proprietary interests of the Company are compromised. In practice, the requirement that the information is relevant to the exercise of shareholders rights is interpreted broadly.¹⁶ The board's response to the request for information must also be made available for inspection by shareholders at the next general meeting. The right to information under article 697 of the CO is

¹¹ BSK OR II-WATTER/ROTH PELLANDA, art. 716 no. 1, art. 716a no. 4; FORSTMOSER PETER/MEIER-HAYOZ ARTHUR/NOBEL PETER., Schweizerisches Aktienrecht, Bern 1996, § 20 n. 13; ISLER MARTINA, Konsultativabstimmung und Genehmigungsvorbehalt zugunsten der Generalversammlung, Diss. Zurich, Zurich/St. Gallen 2010 (= SSW 297), p. 29 et seq.

¹² Art. 716a(1) no. 1 of the CO.

¹³ BSK OR II-WATTER/ROTH PELLANDA, art. 716 no. 4 et seq.; BÖCKLI, Aktienrecht, § 9 no. 365 et seq.

¹⁴ BSK OR II-WATTER/ROTH PELLANDA, art. 716a no. 4; Botschaft AG 1983, 921 et seq.; BÖCKLI, Aktienrecht, § 9 no. 365 et seq.

¹⁵ BSK OR II-WEBER/BAISCH, art. 697 no. 6 et seq.

¹⁶ Art. 697(4) and art. 697a(3) of the CO; Decision of the Swiss Federal Supreme Court of June 4, 2003 (BGer 4C.234/2002), considerations 4.1 and 4.2. Confirmed in the Decision of the Swiss Federal Supreme Court of November 5, 2005 (BGE 132 III 71), consideration 1.3.1.

mandatory and cannot be limited by a company's articles of association.¹⁷ Garmin's AoA comply with these requirements.

3. Overall conclusion: The requested binding shareholder resolution is not a proper subject for shareholder action under Swiss law

The Proposal seeks, by way of a binding shareholder resolution, to mandate action by the Board in an area for which responsibility under Swiss statutory law is vested in the Board, to the exclusion of any other corporate body of the Company, including the general meeting of shareholders. If the shareholders were permitted to cast a binding vote on the Proposal, as contemplated by the Proposal, this would violate the statutory separation of powers among Garmin's corporate bodies, improperly infringe upon the "non-transferable and inalienable" responsibilities of the Board and thus violate Swiss law and Garmin's AoA. Accordingly, the Proposal and the requested binding shareholder resolution are not a proper subject for shareholder action under Swiss law.

Sincerely yours,

HOMBURGER AG



¹⁷ BÖCKLI, Aktienrecht, § 16 no. 796; BSK OR II-WEBER/BAISCH, art. 697 no. 1.



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February 14, 2024

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

Re: Garmin Ltd.
Shareholder Proposal Submitted on behalf of Louise Davis

Reference Number: 498511

Dear Ladies and Gentlemen:

Please be advised that Garmin Ltd. is withdrawing the 14a-8 No-Action Letter ("**No-Action Letter**") because of the withdrawal of the shareholder proposal. On January 9, 2024, Garmin Ltd. submitted the No-Action Letter with the reference number 498511.

Garmin Ltd. has been advised by Nia Impact Capital, the representative of Louis Davis, that on February 13th, 2024, the shareholder proposal included in the No-Action Letter is formally withdrawn. A copy of the correspondence from Meredith Benton, the designated contact person for Nia Impact Capital, withdrawing the proposal is attached.

For any further questions or additional information, please feel free to contact me at +1 (303) 454 2414 and by email at paul.hilton@hoganlovells.com.

Sincerely,

A handwritten signature in blue ink that reads "Paul Hilton".

Paul Hilton

Enclosures

Cc: Andrew Etkind, Garmin Ltd.
Louise Davis
Kristin Hull, Nia Impact Capital
Paloma Mate-Kodjo, Nia Impact Capital
Meredith Benton, Whistle Stop Capital

Dimmer, Alex

From: Hilton, Paul
Sent: Wednesday, February 14, 2024 12:16 PM
To: Dimmer, Alex
Subject: FW: Garmin Ltd

See beginning of string for withdrawal. Not sure if we need to attach it.

From: Etkind, Andrew <Andrew.Etkind@garmin.com>
Sent: Wednesday, February 14, 2024 4:08 AM
To: Hilton, Paul <paul.hilton@hoganlovells.com>
Cc: Maxfield, Josh <Josh.Maxfield@garmin.com>
Subject: Fwd: Garmin Ltd

[EXTERNAL]

Paul,

Please could you promptly notify the SEC that this proposal has been withdrawn by the proponent so that we withdraw our request for a no-action letter?

Best regards,

Andrew

From: Meredith Benton <benton@whistlestop.capital>
Sent: Tuesday, February 13, 2024 7:20:14 PM
To: Crandall, David R. <david.crandall@hoganlovells.com>
Cc: Paloma Mate-Kodjo <paloma@niaimpactcapital.com>; Kristin Hull <kristin@niaimpactcapital.com>; Etkind, Andrew <Andrew.Etkind@garmin.com>; louisedavis53@gmail.com <louisedavis53@gmail.com>; Jaylen Spann <spann@whistlestop.capital>; Sampurna Khasnabis <sampurna@niaimpactcapital.com>; Cheeroke Townsend <cheeroke@niaimpactcapital.com>
Subject: Re: Garmin Ltd

CAUTION - EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hello Mr. Crandall and Mr. Etkind,

Nia Impact Capital withdraws its shareholder proposal. Mr. Etkind, would it be possible to hold a conversation to discuss the substance of the shareholders' concerns? That is, might we schedule a call to discuss Garmin's workplace equity practices?

Thank you,

Meredith

On Fri, Jan 19, 2024 at 9:00 AM Crandall, David R. <david.crandall@hoganlovells.com> wrote:

Dear Ms. Benton, Ms. Mate-Kodjo and Ms. Hull:

Attached please find a letter submitted on behalf of Garmin Ltd today with the Securities and Exchange Commission, relating to the proposal dated December 27, 2023.

Best regards,
David

David Crandall

Partner
He/him

Hogan Lovells US LLP

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