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January 13, 2024

Rule 14a-8(i)(2)
Rule 14a-8(i)(6)

VIA ONLINE SHAREHOLDER PROPOSAL FORM

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

Re: ***Lear Corporation – Proposal Submitted by the North Atlantic States Carpenters Pension Fund***

Ladies and Gentlemen:

On behalf of Lear Corporation (the "***Company***"), we are submitting this letter to notify the Securities and Exchange Commission (the "***Commission***") of the Company's intention to exclude a stockholder proposal (the "***Proposal***") submitted by the North Atlantic States Carpenters Pension Fund (the "***Proponent***") from the Company's proxy statement and form of proxy (collectively, the "***2024 Proxy Materials***") to be distributed to the Company's stockholders in connection with its 2024 Annual Meeting of Shareholders (the "***2024 Annual Meeting***"). The Company respectfully requests confirmation that the staff of the Division of Corporation Finance (the "***Staff***") will not recommend to the Commission that enforcement action be taken if the Company excludes the Proposal from the 2024 Proxy Materials for the reasons discussed below.

In accordance with Staff guidance, this letter is being submitted using the Staff's online Shareholder Proposal Form. Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), we have: (i) submitted this letter to the Commission no later than eighty (80) days before the Company intends to file its 2024 Proxy Materials and (ii) sent a copy of this submission to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008) provide that a shareholder proponent is required to send the Company a copy of any correspondence 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 to the Staff regarding the Proposal, the Proponent should concurrently furnish a copy of that correspondence via email to the undersigned on behalf of the Company.

Pursuant to the guidance in Section F of Staff Legal Bulletin No. 14F (October 18, 2011), we ask that the Staff provide its response to this request to the undersigned via email at the address noted in the last paragraph of this letter.

THE PROPOSAL

The Proposal, dated December 1, 2023, sets forth the following proposed resolution for the vote of the Company's stockholders at the 2024 Annual Meeting:

> **Resolved:** That the shareholders of Lear Corporation ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject

a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

A copy of the Proponent's complete submission, including the Proposal, supporting statement, and related materials, is attached hereto as Exhibit A.

BASES FOR EXCLUSION

The Company respectfully requests that the Staff concur in its view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to:

(i) Rule 14a-8(i)(2), on the basis that implementation of the Proposal would require the Company to violate Delaware law; and

(ii) Rule 14a-8(i)(6), on the basis that, under Delaware law, the Company lacks the power to implement the Proposal.

ANALYSIS

I. The Proposal May Be Excluded from the 2024 Proxy Materials Under Rule 14a-8(i)(2) Because Implementation of the Proposal Would Require the Company to Violate Delaware Law.

Under Rule 14a-8(i)(2), a company may exclude a shareholder proposal if implementation of such proposal would "cause the company to violate any state, federal or foreign law to which it is subject." As discussed below and for the reasons set forth in the legal opinion furnished to the Company by Richards, Layton & Finger, P.A. (the "***Delaware Counsel Opinion***"), attached hereto as Exhibit B, the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because its implementation would cause the Company to violate Delaware law.

The Staff has previously concurred with the exclusion of shareholder proposals where the proposal, if implemented, would have caused the applicable company to violate state law. For example, in *Johnson & Johnson* (avail. Feb. 16, 2012), the Staff concurred with the exclusion of a proposal that would limit the authority of the board of directors to select committee members. If adopted, the proposed bylaw would have disqualified directors from membership of the compensation committee if such directors received a certain number of "no" or "withhold" votes. As set forth in the supporting legal opinion for *Johnson & Johnson*, such provision was in contravention of New Jersey law, which reserves exclusive authority to the board of directors to appoint directors to committees and select committee members in the exercise of its fiduciary duties. In *Oshkosh Corp.* (avail. Nov. 21, 2019), the Staff concurred with the exclusion of a proposed bylaw amendment that would require immediate removal of a director who received less than a majority vote. The reason the Staff cited for its support was that the implementation of the proposed bylaw introduced a different standard than required under Wisconsin law, which

permitted director removal only by shareholder vote at a special removal meeting or a judicial proceeding.

Just as in *Johnson & Johnson* and *Oshkosh*, and as further explained in the Delaware Counsel Opinion, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal seeks to (i) limit the decision-making authority of the Board of Directors (the "***Board***") in contravention of its fiduciary duties imposed by Delaware law, and (ii) in certain circumstances, permit stockholders to effect the removal of a director without the vote required under Delaware law. Accordingly, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(2).

A. The Proposal limits the Board's decision-making authority in contravention of the Board's fiduciary duties imposed by Delaware Law.

The Company is incorporated under the laws of the State of Delaware and is therefore governed by Delaware Law. As discussed in the Delaware Counsel Opinion, Section 141(a) of the Delaware General Corporation Law (the "***DGCL***") reserves for the Board the full power and authority to manage the business and affairs of the Company. In acting on its authority under the DGCL, the Board owes fiduciary duties of care and loyalty to the Company and its stockholders, which requires the Board to base its decisions on a good faith belief that such decisions are in the best interests of the Company and its stockholders. The decision whether to accept a director's resignation is one such business decision in which the Board is required to exercise its fiduciary duties. In contrast, the Proposal would require current and future directors of the Company to make a substantive decision about whether to accept a director's tendered resignation based on a "compelling reasons" standard that has meaning only if it would require the directors to accept such resignation in circumstances where proper application of their fiduciary duties would cause them to decide otherwise. As discussed in the Delaware Counsel Opinion, the "compelling reasons" standard "appears designed to require the Board to accept a resignation even in circumstances where the Board believes, in the good faith exercise of its fiduciary duties under Delaware law, that accepting the resignation is not in the best interests of the company and its stockholders."

If adopted, the Proposal would require the Board to reach a different conclusion than it would if it were to exercise its fiduciary duties as required under Delaware law. As such, and as the Delaware Counsel Opinion concludes, "[b]ecause the bylaw provision contemplated by the Proposal mandates the Company's current and future directors accept director resignations based on a 'compelling reasons' standard that does not take into account the director's fiduciary duties, it violates Section 141(a) Delaware law." As described above, stockholders may not require the Board to make substantive decisions without regard to the application of their fiduciary duties under Delaware law.

B. The Proposal would in effect permit the removal of a director by stockholders without the vote required by Delaware Law.

The Proposal also violates Delaware law by effectively imposing a voting standard for the removal of directors that is contrary to Section 141(k) of the DGCL. Section 141(k) of the DGCL provides that, other than with respect to two exceptions that are inapplicable to the

Company, the voting standard for the removal of directors is "*a majority of the shares then entitled to vote at* [emphasis added] at an election of directors." As explained by the Delaware Counsel Opinion, "Delaware courts have held that a bylaw provision that purports to permit the stockholders to remove directors by a lesser voting standard than required by Section 141(k) is invalid under Delaware law." The Proposed bylaw would in effect end the term of the holdover director and require the holdover director's automatic removal from office 30 days after the certification of the election vote when he or she fails a second time to receive a majority of votes cast in an uncontested director election. Therefore—and as further explained in the Delaware Counsel Opinion—if the Proposal is implemented, it would cause the Company to violate Delaware law by imposing a different voting standard for the removal of a director than that prescribed by the DGCL.

The Delaware Counsel Opinion highlights the supporting statement to the Proposal, which states that the intended purpose of the automatic removal provision is to ensure that the stockholder vote is the "final word when a continuing holdover director is not re-elected" which suggests that "the clear purpose and intent of such provision is to end the holdover term of the director and remove the holdover director from office if such director does not receive a majority of the votes cast at the second annual meeting." Just as in *Oshkosh*, described above, the present Proposal would require the removal of a director without the proper statutory vote.

If the Proposal is approved by stockholders, the resulting bylaw would provide for the automatic termination of the director's service based on a failure to receive a majority of votes cast for his or her election at two consecutive director elections, which is a lower standard than the statutorily imposed standard under Section 141(k) of the DGCL which requires a majority of the shares then entitled to vote. Because the Proposal's implementation would reduce the voting standard required to end the term of a holdover director and remove the director from office in the way described both here and in the Delaware Counsel Opinion, implementing the Proposal would violate Delaware law and therefore the Proposal may be properly excluded under Rule 14a-8(i)(2).

II. The Proposal May Be Excluded from the 2024 Proxy Materials Pursuant to Rule 14a-8(i)(6) Because the Company Lacks the Power to Implement the Proposal Under Delaware Law.

Rule 14a-8(i)(6) permits exclusion of a proposal "if the company would lack the power or authority to implement the proposal." The Staff has consistently allowed shareholder proposals to be excluded under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) when the implementation of such proposal would violate state law and, as such, the company would lack the authority to implement the proposal. *See, e.g.*, *Arlington Asset Investment Corp.* (avail. April 23, 2021) (concurring with the company's request to exclude a shareholder proposal under Rule 14a-8(i)(6) where the company successfully argued that the proposal, if implemented, would violate Virginia law); *eBay Inc.* (avail. April 1, 2020) (concurring with the company's request to exclude a

shareholder proposal under Rule 14a-8(i)(6) where the company successfully argued that the proposal, if implemented, would violate Delaware law).

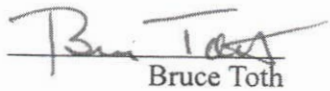
As discussed above and in more detail in the Delaware Counsel Opinion, the Company cannot implement the Proposal without violating Sections 141(a) and 141(k) of the DGCL. Therefore, just as in *Arlington Asset Investment* and *eBay*, the Proposal may properly be excluded under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6).

CONCLUSION

Based on the foregoing analysis, we respectfully request that the Staff confirm that no enforcement action will be taken if the Company excludes the Proposal from its 2024 Proxy Materials for the 2024 Annual Meeting.

If you have any questions or need additional information, please feel free to contact Bruce Toth at (312) 558-5723 or Oriana Pietrangelo at (312) 558-3187. Correspondence regarding this letter should be sent via email to BToth@winston.com and OPietrangelo@winston.com.

Sincerely,



Bruce Toth

Oriana Pietrangelo

Enclosures:

Exhibit A: Proposal
Exhibit B: Delaware Counsel Opinion

cc: Harry Kemp, Lear Corporation
Richards, Layton & Finger, P.A.
David Minasian, North Atlantic States Carpenters Pension Fund

Exhibit A

Proponent's Submission

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

United Brotherhood of Carpenters and Joiners of America

750 DORCHESTER AVENUE
BOSTON, MA 02125-1132

[redacted]

JOSEPH BYRNE
EXECUTIVE SECRETARY - TREASURER

SENT VIA OVERNIGHT USPS

December 1, 2023

Harry A. Kemp
Senior Vice President, Chief Administrative Officer
and General Counsel
Lear Corporation
21557 Telegraph Road
Southfield, MI 48033

Dear Mr. Kemp:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the North Atlantic States Carpenters Pension Fund ("Fund"), for inclusion in the Lear Corporation ("Company") proxy statement to be circulated in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of director resignations and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of shares of the Company's common stock, with a market value of at least $25,000, which shares have been held continuously for more than a year prior to and including the date of the submission of the Proposal. Verification of this ownership by the record holder of the shares, State Street Bank and Trust Company, will be sent under separate cover. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. Either the undersigned or a designated representative will present the Fund's Proposal for consideration at the annual meeting of shareholders.

If you would like to discuss the Proposal, please contact David Minasian at [redacted] Mr. Minasian will be available to discuss the proposal on Tuesday, December 19, or Tuesday, December 26, from 1:00PM to 5:00PM (ET) either day or other mutually agreeable date and time. Please forward any correspondence related to the proposal to Mr. Minasian, North Atlantic States Regional Council, 29 Endicott Street, Worcester, MA 01610 or at the email address above.

Sincerely,

Joseph Bryne
Fund Trustee

cc. David Minasian
Edward J. Durkin

Enclosure

Director Election Resignation Bylaw Proposal

Resolved: That the shareholders of Lear Corporation ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

Supporting Statement: The Proposal requests that the Board establish a director resignation bylaw to enhance director accountability. The Company has established in its bylaws a majority vote standard for use in an uncontested director election, an election in which the number of nominees equal the number of open board seats. Under applicable state corporate law, a director's term extends until his or her successor is elected and qualified, or until he or she resigns or is removed from office. Therefore, an incumbent director who fails to receive the required vote for election under a majority vote standard continues to serve as a "holdover" director until the next annual meeting. A Company governance policy currently addresses the continued status of an incumbent director who fails to be re-elected by requiring such director to tender his or her resignation for Board consideration.

The new director resignation bylaw will set a more demanding standard of review for addressing director resignations then that contained in the Company's resignation governance policy. The resignation bylaw will require the reviewing directors to articulate a compelling reason or reasons for not accepting a tendered resignation and allowing an unelected director to continue to serve as a "holdover" director. Importantly, if a director's resignation is not accepted and he or she continues as a "holdover" director but again fails to be elected at the next annual meeting of shareholders, that director's new tendered resignation will be automatically effective 30 days following the election vote certification. While providing the Board latitude to accept or not accept the initial resignation of an incumbent director that fails to receive majority vote support, the amended bylaw will establish the shareholder vote as the final word when a continuing "holdover" director is not re-elected. The Proposal's enhancement of the director resignation process will establish shareholder voting in director elections as a more consequential governance right.

Exhibit B

Delaware Counsel Opinion

January 12, 2024

Lear Corporation
21557 Telegraph Road
Southfield, Michigan 48033

Re: Stockholder Proposal on behalf of North Atlantic States Carpenters Pension Fund

Ladies and Gentlemen:

We have acted as special Delaware counsel to Lear Corporation, a Delaware corporation (the "Company"), in connection with a stockholder proposal (the "Proposal") on behalf of North Atlantic States Carpenters Pension Fund (the "Proponent"), dated December 1, 2023, for the 2024 annual meeting of stockholders of the Company (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Delaware.

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Amended and Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on November 9, 2009, as amended by the Certificate of Designations as filed with the Secretary of State on November 9, 2009, as amended by the Certificates of Merger as filed with the Secretary of State on July 6, 2010, November 23, 2010, December 21, 2016, December 16, 2019, January 27, 2020 and December 13, 2022, respectively, (collectively, the "Certificate of Incorporation"); (ii) the Second Amended and Restated Bylaws of the Company, amended as of November 14, 2023 (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states the following:

> **Resolved:** That the shareholders of Lear Corporation ("Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

We have been advised that the Company is considering excluding the Proposal from the Company's proxy statement for the Annual Meeting under, among other reasons, Rule 14a-8(i)(2) promulgated under the Securities Exchange Act of 1934, as amended. Rule 14a-8(i)(2) provides that a registrant may omit a proposal from its proxy statement when "the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." In this connection, you have requested our opinion as to whether, under Delaware law, the implementation of the Proposal, if adopted by the Company's stockholders, would violate Delaware law.

For the reasons set forth below, to the extent the Proposal, if implemented, (i) requires the board of directors of the Company (the "Board") to accept a resignation in circumstances where doing so would violate its fiduciary duties or (ii) effects the removal of a director without the statutorily required vote, the Proposal, in our opinion, would violate Delaware law.

DISCUSSION

The Proposal would violate Delaware law if implemented.

The Proposal requests that the Board adopt a provision in the Bylaws which, among other things, requires each director nominee to submit an irrevocable conditional resignation to be effective if the director fails to receive "the required majority vote support" in an uncontested

election. The bylaw provision contemplated by the Proposal would require the Board to accept such a tendered resignation unless the Board finds a "compelling reason or reasons" not to accept the resignation. The bylaw provision contemplated by the Proposal thus would impose a "compelling reasons" standard on decisions made by the current and future Boards with respect to accepting resignations tendered by directors in accordance with the bylaw provision.

For the reasons set forth below, in our opinion, because the Proposal, if adopted, would require the Company's current and future boards to accept a director's resignation unless there were "compelling reasons" not to, the Proposal effectively requires the Board to accept a resignation in circumstances where the board believes, in the good faith exercise of its fiduciary duties under Delaware law, that accepting the resignation is not in the best interests of the Company and its stockholders. Because the Proposal requires that the Board accept resignations in circumstances where proper application of the Board's fiduciary duties would preclude it from doing so, the Proposal violates Delaware law.

Section 141(a) of the General Corporation Law provides that the "business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." 8 *Del. C.* § 141(a). Significantly, if there is to be any variation from the mandate of Section 141(a), it can only be as "otherwise provided in this chapter or in its certificate of incorporation." *See, e.g.*, *Lehrman v. Cohen*, 222 A.2d 800, 808 (Del. 1966). The Certificate of Incorporation does not provide for management of the Company by persons other than directors, and the phrase "except as otherwise provided in this chapter" does not include bylaws adopted pursuant to Section 109(b) of the General Corporation Law. Thus, the Board possesses the full power and authority to manage the business and affairs of the Company. *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984); *see also In re CNX Gas Corp. S'holders Litig.*, 2010 WL 2705147, at *10 (Del. Ch. July 5, 2010) ("the premise of board-centrism animates the General Corporation Law"); *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000) ("One of the fundamental principles of the Delaware General Corporation Law statute is that the business affairs of a corporation are managed by or under the direction of its board of directors.") (citing 8 *Del. C.* § 141(a)); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.") (footnote omitted). In making business decisions, directors owe duties of care and loyalty to the corporation and all of its stockholders which requires them to base their decisions on what they reasonably believe to be in the best interests of the corporation and its stockholders. *Mills Acq. Co. v. Macmillan, Inc.*, 559 A.2d 1261,1280 (Del. 1989).

The Delaware courts have held that a bylaw that purports to mandate a substantive decision on the part of the board of directors without regard to the application of the directors' fiduciary duties violates Section 141(a). *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 235-338 (Del. 2008). For example, in *CA, Inc.*, the Delaware Supreme Court held that a proposed stockholder adopted bylaw that mandated that the board of directors reimburse a stockholder for its expenses in running a proxy contest to elect a minority of the members of the

board of directors would violate Delaware law because it mandated reimbursement of proxy expenses even in circumstances where a proper application of fiduciary principles would preclude doing so. *Id*. Thus, a corporation's board or its stockholders may not bind future directors on matters involving the management of the company. *Id*.; *see also Carmody v. Toll Bros., Inc.*, 723 A.2d 1180, 1191 (Del. Ch. 1998) (refusing to dismiss claims that the "deadhand" provision in the company's rights plan which would limit a future board's ability to redeem the rights plan was invalid under Delaware law); *Quickturn Design Sys., Inc.*, 721 A.2d at 1281 (invalidating a provision that, under certain circumstances, would have prevented newly-elected directors from redeeming a rights plan for a six-month period); *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34, 51 (Del. 1994) (invalidating a provision in a merger agreement that prevented the directors from communicating with competing bidders); *Abercrombie v. Davies*, 123 A.2d 893, 899 (Del. Ch. 1956) (invalidating a provision in an agreement that required the directors to act as directed by an arbitrator in certain circumstances where the board was deadlocked), *rev'd on other grounds*, 130 A.2d 338 (Del. 1957).

The decision whether to accept a resignation is a business decision for the Board in which it is required to exercise its fiduciary duties. *Louisiana Mun. Police Emps. Ret. Sys. v. Morgan Stanley & Co. Inc.*, 2011 WL 773316, at *6 (Del. Ch. Mar. 4, 2011). There are a number of factors which need to be considered in deciding whether to accept a resignation which a Board must consider and balance, including, without limitation, the underlying reasons for the director failing to receive a majority vote for such director's election, the tenure and qualifications of the director, the director's past and expected future contributions to the Board and the overall composition of the Board including whether accepting the resignation would cause the Company to fail to meet the requirements of any law, rule or regulation applicable to the Company. The Proposal requests amendments to the Bylaws that would mandate current and future directors of the Company to make determinations based on a "compelling reasons" standard that has meaning only if it would require the directors to accept a resignation in circumstances where proper application of its fiduciary duties would cause it to decide otherwise. Because the bylaw provision contemplated by the Proposal mandates the Company's current and future directors accept director resignations based on a compelling reasons standard that does not take into account the director's fiduciary duties, it violates Delaware law.

In addition, the bylaw contemplated by the Proposal would require that, if the board finds there are compelling reasons not to accept the resignation of a director who did not receive a majority of the votes cast for such director's election (and thus continues as a holdover director) *and* such director fails to receive a majority of the votes cast for such director's election at the next annual meeting of stockholders, such director's resignation "will be automatically effective 30 days after the certification of the election vote." The supporting statement to the Proposal provides that the foregoing provision is intended to ensure that the stockholder vote is the "final word when a continuing 'holdover' director is not re-elected." Thus, the clear purpose and intent of such provision is to end the holdover term of the director and remove the holdover director from office if such director does not receive a majority of the votes cast at the second annual meeting. The bylaw contemplated by the Proposal would thus set for the removal of any such holdover director a voting standard based on a majority of the votes cast at the meeting (which is the applicable

standard for the election of directors in an uncontested election as set forth in the Bylaws). To the extent such bylaw purports to fix the stockholder vote required to end the term of a holdover director and remove the holdover director from office as a majority of the votes cast, it violates Delaware law.

Section 141(k) of the General Corporation Law provides that, other than with respect to two exceptions that are not applicable to the Company,[1] "any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors." 8 *Del. C.* § 141(k). A bylaw may not override a statutory mandate. *See* 8 *Del. C.* § 109(b); *Kerbs v. California Eastern Airways*, 90 A.2d 652, 658-59 (Del. 1952) (finding that a bylaw purporting to allow establishment of a quorum with fewer directors than the minimum required by statute to be void and stating that "a by-law which is repugnant to the statute must always give way to the statute's superior authority"). A bylaw that is contrary to statute is void. *Sinchareonkul v. Fahnemann*, 2015 WL 292314, at *8 (Del. Ch. Jan. 22, 2015) (observing, in finding that a bylaw that purported to provide a specified director additional votes qua director was invalid in light of statute, Section 141(d) of the General Corporation Law, requiring any such provision to appear in the certificate of incorporation, that "[u]nder Section 109(b), a bylaw that conflicts with the DGCL is void."). The Delaware courts have held that a bylaw provision that purports to permit the stockholders to remove directors by a lesser voting standard than required by Section 141(k) is invalid under Delaware law. *Frechter v. Zier*, 2017 WL 345142, at *4 (Del Ch. Jan. 24, 2017) (holding that a director removal provision in the bylaws that allowed a simple majority of stockholders to remove directors is "unambiguously[ ] inconsistent with the statute"). The Delaware courts have also held that a bylaw may not impose a requirement that disqualifies a director and terminates the director's service. *See, e.g. Kurz v. Holbrook*, 989 A.2d 140, 157 (Del. Ch. 2010) ("In light of the three procedural means for ending a director's term in Section 141(b), I do not believe a bylaw could impose a requirement that would disqualify a director and terminate his service."); *see also Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *12 (Del.Ch. July 21, 2000). Thus, to the extent that the bylaw provision contemplated by the Proposal would reduce the vote required to end the term of a holdover director and remove that director from office from a majority in voting power of the outstanding shares entitled to vote in the election of such director to a majority of the votes cast at the meeting, it violates Section 141(k) of the General Corporation Law and is therefore invalid.

CONCLUSION

Based upon and subject to the foregoing and subject to the limitations stated herein, it is our opinion that the Proposal, if implemented, would violate Delaware law.

[1] The two exceptions relate to the removal of directors from a classified board or where cumulative voting in the election of directors is permitted. 8 *Del. C.* § 141(k). The Company does not have a classified board and does not permit cumulative voting the election of directors.

The foregoing opinion is limited to the laws of the State of Delaware. We have not considered and express no opinion on the laws of any other state or jurisdiction, including federal laws regulating securities or any other federal laws, or the rules and regulations of stock exchanges or of any other regulatory body.

The foregoing opinion is rendered solely for your benefit in connection with the matters addressed herein. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and to the Proponent in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, this opinion letter may not be furnished or quoted to, nor may the foregoing opinion be relied upon by, any other person or entity for any purpose without our prior written consent.

Very truly yours,

Richards, Layton & Finger, P.A.

MDA/JJV