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

DIVISION OF
CORPORATION FINANCE

March 26, 2024

Bruce Toth
Winston & Strawn LLP

Re: Lear Corporation (the “Company”)
Incoming letter dated January 13, 2024

Dear Bruce Toth:

This letter is in response to your correspondence concerning the shareholder proposal (the “Proposal”) submitted to the Company by the North Atlantic States Carpenters Pension Fund for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders.

The Proposal asks that the board of directors take the necessary action to adopt specific director election resignation provisions in the Company’s bylaws.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(2). Refer to our response in *Verizon Communications Inc.* (Mar. 15, 2024). Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(2). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based 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: Edward J. Durkin
United Brotherhood of Carpenters and Joiners of America

WINSTON & STRAWN LLP

NORTH AMERICA SOUTH AMERICA EUROPE ASIA

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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

<u>Exhibit A</u>

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

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.

<u>Exhibit B</u>

Delaware Counsel Opinion

RICHARDS LAYTON & FINGER 125 YEARS

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.

One Rodney Square ■ 920 North King Street ■ Wilmington, DE 19801 ■ Phone: 302-651-7700 ■ Fax: 302-651-7701

www.rlf.com

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.

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[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

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

VIA ELECTRONIC SUBMISSION

February 26, 2024

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

Re: *Lear Corporation*
Response of the North Atlantic States Carpenters Pension Fund to Lear Corporation's No-Action Request

Ladies and Gentlemen:

On December 1, 2023, the North Atlantic States Carpenters Pension Fund ("Fund") submitted to Lear Corporation ("Company") a Director Election Resignation Bylaw shareholder proposal ("Proposal") pursuant to Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission ("Commission") proxy regulations. On January 13, 2024, the Company filed with the Commission a request for the Staff's concurrence in their view that the Proposal may be excluded from the Company's 2024 Proxy Materials. A copy of this response to the Company's request is being sent to the Company and to its outside legal counsel. For the reasons outlined below, we believe that the Company has failed to state any proper bases for omitting the Proposal from its Proxy Materials to be circulated in conjunction with its 2024 annual meeting of shareholders. Rather than limiting the Company's board of directors' rights to manage the operations of the Company, the Proposal simply fortifies the fundamental right of shareholders, as the owners of the Company, to exercise their most important right of ownership, the right to vote in the election of Company directors.

THE PROPOSAL

The text of the Fund's Proposal submitted for inclusion in the Company's 2024 Proxy Materials is set forth below.

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.

OPPOSITION TO THE COMPANY'S REQUEST FOR NO-ACTION RELIEF

The Fund believes that the arguments against the Proposal by the Company and its Delaware counsel are unpersuasive and do not establish grounds for the omission of the Proposal from the Company's Proxy Materials to be distributed in conjunction with its 2024 annual meeting of shareholders. Specifically, Company arguments on the following basis for relief are not persuasive:

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

PROPOSAL BACKGROUND AND CONTEXT

It is instructive to review the voting rights that corporate shareholders in Delaware incorporated corporations possess in evaluating the Company's no-action letter arguments. Section 211(b) of the Delaware General Corporation Law ("DGCL") establishes that an annual meeting of stockholders shall be held for the election of directors on a date and time designated by or in the manner provided in a corporation's bylaws. In addition to the shareholders' right to elect directors at the annual meeting, "any other proper business" may be transacted. The election of directors by shareholders is a foundational right in the corporate governance system established in the DGCL. "The shareholder franchise is the ideological underpinning upon which the legitimacy of directorial power rests." *Blasius Indus., Inc. v. Atlas Corp*., 564 A.2d 651, 659 (Del.Ch. 1988).

A plurality vote standard[1] in the election of directors was set as the default vote standard in 1987 when the DGCL was amended to replace the majority vote standard that was in place for all matters voted upon at an annual meeting of shareholders. The DGCL election vote standard change was prompted by the growing number of contested elections in an era of hostile takeover activity and

[1] A plurality vote standard in a director election holds that the director nominees that receive the highest number of "For" votes corresponding to the number of open board seats are elected. Further, "Against" votes are not permitted; the option is to "Withhold." Thus, a single "For" vote assures election.

the incompatibility of a majority vote standard with contested elections.[2] The new plurality default standard applied to both contested and uncontested director elections. While a plurality vote standard is the appropriate vote standard in a contested director election,[3] the use of the plurality standard in an uncontested director election virtually ensures that board-sponsored nominees are elected. To address this issue, a shareholder private-ordering campaign[4] using precatory shareholder proposals began in 2003 to advance the adoption of a majority vote standard in uncontested director elections. This decades-long governance activism resulted in the broad market adoption of a majority vote standard by most large and mid-cap publicly traded companies.[5] The majority vote standard in an uncontested election provides shareholders the opportunity to vote "for" or "against" board nominees, raising the possibility that director nominees, both new nominees and incumbent directors running for reelection, might fail to be elected, or in the case of incumbent directors reelected.

For the first time, uncontested director elections could result in director nominees, both new nominees and incumbents, failing to be elected. DGCL Section 141(b) states in part that an elected director shall hold office until "such director's successor is elected and qualified or until such director's earlier resignation or removal." Thus, under DGCL an incumbent director nominee that is not re-elected in an uncontested director election with a majority vote standard continues to serve as a director, a "holdover" director, absent his or her resignation. With increasing corporate adoption of a majority vote standard for uncontested elections and the possibility of an incumbent director losing a reelection vote, it was necessary to construct a post-election process to address the continued status of an unelected "holdover" director. Director election resignation policies and bylaws developed as a necessary and important complementary component to the majority vote standard in uncontested director elections.

Pfizer Inc. advanced the first director election resignation policy, proposing it as an alternative to the adoption of a majority vote bylaw. The Pfizer model became known as the "plurality plus" model as it combined the plurality vote standard with a conditional director resignation. Under the "plurality plus" model, an incumbent board nominee who received more so-called "withhold" votes than "for" votes was required to submit a resignation letter even though the director had been reelected.[6] The market ultimately rejected the "plurality plus" model as an alternative to majority voting, but the conditional resignation was embraced as a complementary component of the majority vote regime.

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[2] The use of a majority vote standard in a contested election can result in a "failed election". A "failed election" occurs when a non-management board nominee receives more votes than an incumbent director but short of a majority resulting in the incumbent directors continuing in office as a "holdover" director.

[3] In a contested election with more board nominees than available board seats, the nominees receiving the highest number of votes corresponding to the number of available board seats are elected.

[4] A private-ordering campaign by the United Brotherhood of Carpenter Pension Funds and other Trades Fund that used precatory shareholder proposals to urge the adoption of a majority vote standard bylaw spanned multiple years beginning in 2003 and transformed the vote standard in the common uncontested director election (an election in which the number of board-sponsored nominees equals the number of open board seats).

[5] The plurality vote standard remains the default standard under the DGCL.

[6] A Commission rulemaking in 1979 instituted the use of so-called "withhold" votes in director elections under the plurality vote standard. The "withhold" vote is an abstention and has no legal effect on an election outcome. Securities Exchange Act Release 34-16356 (November 21, 1979) 44FR68764 (November 29, 1979).

In 2006, DGCL Section 141(b) was amended to add a new provision that a director resignation may be made effective upon the happening of a future event or events, coupled with authority granted in the same section to make certain resignations irrevocable. By permitting a corporation to enforce a director resignation conditioned upon the director's failure to achieve a specified vote for reelection, e.g., more votes "For" than "Against", coupled with board acceptance of the resignation, these provisions permit corporations and individual directors to agree voluntarily, and give effect in a manner subsequently enforceable by the corporation, to voting standards for the election of directors which differ from the plurality default standard in Section 216. A director resignation could now be conditioned upon the happening of a future event (failure to be reelected) and could be made irrevocable. The legislature took the additional step in 2006 to amend DGCL Section 216 to support the majority vote standard by providing that a bylaw adopted by a vote of stockholders that prescribes the required vote for the election of directors may not be unilaterally altered or repealed by the board of directors.

Following the 2006 DGCL amendments, majority vote corporations adopted "director resignation" governance policies or bylaw provisions to address the status of an unelected "holdover" director. The typical resignation policy or bylaw sets a process for board review of the tendered resignation, with the board deciding whether the resignation is accepted or rejected. The resignation provisions outline a timeline and process for review of a tendered resignation by the board, or some subset thereof, such as a board's governance committee. Typically included is a statement that the board's decision will be made in the best interests of the company. Most companies commit to inform shareholders of the board's decision by means of a Commission Form 8-K filing. In the event a tendered resignation is not accepted, the disclosure will usually include the rationale for the board's decision and possible alternative action to be taken.

THE COMPANY'S RESIGNATION POLICY AND THE PROPOSAL

The Company has in place a director resignation policy in its Corporate Governance Guidelines. https://ir.lear.com/static-files/82ab750a-ff0a-4b2a-a3c7-850bf133c7e2.
The policy reads as follows:

> **III. VOTING FOR DIRECTORS AND RESIGNATION POLICY RELATING TO MAJORITY VOTING IN DIRECTOR ELECTIONS**
>
> In accordance with the Company's bylaws, except in the case of a Contested Election (as defined in Section 1.7 of the Company's bylaws), a director nominee must receive the vote of a majority of votes cast with respect to his or her election in order to be elected or re-elected to the Board. An incumbent director must tender his or her resignation immediately following the certification of the stockholder vote relating to such director's election if he or she fails to receive the number of votes required for re-election.
>
> Within 90 days following such certification of the stockholder vote, the Governance and Sustainability Committee will determine whether to accept the director's resignation or take other action and will submit such recommendation for prompt consideration by the Board. The Board will act promptly on the Committee's

recommendation and will disclose its decision whether to accept the director's tendered resignation (and the reasons for rejecting the resignation, if applicable) in a Form 8-K furnished with the United States Securities and Exchange Commission. The Governance and Sustainability Committee may consider any factors that such committee deems relevant in determining whether to accept a director's resignation. In the event that one or more directors' resignations are accepted by the Board, the Governance and Sustainability Committee will recommend to the Board whether to fill such vacancy or vacancies or to reduce the size of the Board.

Any incumbent director who fails to receive the votes required for re-election in an election other than a Contested Election and who tenders his or her resignation pursuant to the Company's bylaws shall remain active and engaged in Board activities while the Governance and Sustainability Committee considers his or her resignation; provided, however, it is expected that such incumbent director shall voluntarily recuse himself or herself from participation in any proceedings or consideration by the Governance and Sustainability Committee or the Board regarding whether to accept such director's resignation or to take other action with respect to such director.

RESPONSE TO RULE 14a-8(i)(2) ARGUMENT

The Fund's precatory Proposal requests that the Board take the necessary action to adopt a director resignation bylaw that empowers the Board to address the legal status of an unelected "holdover" director. Importantly, the Proposal advances a bylaw that calls on the Board in the exercise of its fiduciary duties to articulate a "compelling reason or reasons" should it not accept the tendered resignation of a director opposed by a majority vote of shareholders. Further, the Proposal urges that the Company's new bylaw crafted by the Board hold that the conditional and irrevocable resignation of a "holdover" director not elected at a second consecutive meeting be effective 30 days after the certification of election results. As used in the Proposal, we define a "compelling reason or reasons" consistent with the ordinary meaning of the words, that is a reason that convinces someone that something should be done, in this case not to accept a resignation despite the director failing to receive majority shareholder support. The reason or reasons to reject a resignation must be "compelling," as determined by the Board in its business judgment, which requires the directors to make all decisions with due care and in good faith under Delaware corporation law. The requirement that a "holdover" director's second consecutive election defeat result in the acceptance of his or her tendered resignation comports with the importance of shareholder voting rights in director elections. Board action to create the bylaw as requested would simply bind it to give effect to shareholders' director election voting rights. A board's failure to adequately address the individual director or company performance issue or issues that prompted a director's initial election loss justifies the proposed heightened accountability. Limiting Board discretion in this context is appropriate and a measured toughening of the consequences of a repeated election loss for a "holdover" director.

The Company and its Delaware counsel argue that the Proposal may be excluded under Rule 14a-8(i)(2) because implementing it would cause the Company to violate Delaware law and Rule 14a-8(i)(6) because the Company lacks the power to implement the Proposal. The Company argues that the "compelling reason or reasons" language and the required acceptance of a "holdover" director's resignation following a second consecutive election loss would cause the Board to violate its fiduciary duty to act in the best interest of the Company and its stockholders in contravention of Delaware law for the following reasons:

1. The Proposal Limits the Board's Decision-Making Authority in Contravention of Its Fiduciary Duties.

2. The Proposal would in effect permit the removal of a director without the vote required by Delaware law.

The Fund believes that the Company fails to present persuasive arguments for omission based on Rule 14a--8(i)(2) and Rule 14a-8(i)(6).

The Proposal Would Not Limit the Board's Decision-Making Authority

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. The Company is incorporated under the laws of the state of Delaware. Section 141(a) of the DGCL provides: "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." The Company argues that the Board's authority to manage the business and affairs of the Company under the DGCL requires that the Board have complete authority to accept or reject a "holdover" director's resignation. It cites several cases for the proposition that a board of directors has authority to manage the business and affairs of a Delaware corporation. The Fund does not dispute this proposition. However, the Company's resignation policy sets the process for the adjudication of shareholder vote outcomes in director elections, not the management of the "business and affairs" of the Company. Thus, the Proposal's resignation bylaw provisions do not interfere with the Board's management of the Company nor does requesting acceptance of an incumbent nominees previously tendered resignation constitute compelling directors to breach their fiduciary duties.

The official State of Delaware website contains a discussion of Delaware Corporate Law entitled "The Delaware Way: Deference to the Business Judgment of Directors Who Act Loyally and Carefully." *www.corplaw.delaware.gov.* It begins by stating:

> The Delaware General Corporation Law's central mandate appears in Section 141(a); it provides that the business and affairs of every Delaware corporation are managed by or under the direction of the corporation's board of directors. In discharging their duty to manage or oversee the management of the corporation, directors owe fiduciary duties of loyalty and care to the corporation and its stockholders.
>
> Business judgment rule**:** Although some major transactions require the consent of stockholders as well as the approval of the board, the board generally has the power and duty to make business decisions for the corporation. These decisions include establishing and overseeing the corporation's long-term business plans and strategies, and the hiring and firing of executive officers. Delaware law affords

directors making such decisions a set of presumptions—known as the "business judgment rule"—that, so long as a majority of the directors have no conflicting interest (see "duty of loyalty" below) in the decision, their decision will not later be second-guessed by a court if it is undertaken with due care and in good faith.

Managing the business and affairs of a Delaware corporation clearly includes authority to establish and oversee a company's long-term strategic plans, hire, monitor, compensate and, if necessary, fire executive officers. Just as clearly, overseeing the election of directors is not within the exclusive purview of the board of directors as the Company's request for no-action relief request suggests.

The Company fails to establish that Delaware law assigns to the board of directors unlimited power over the election of directors. Delaware law does no such thing. In MM Companies v. Liquid Audio, Inc., 813 A.2d 1118, 1128 (Del. 2003), the Delaware Supreme Court stated:

> The most fundamental principles of corporate governance are a function of the allocation of power within a corporation between its stockholders and its board of directors. [] The stockholders' power is the right to vote on specific matters, in particular, in an election of directors. The power of managing the corporate enterprise is vested in the shareholders' duly elected board representatives. [] Accordingly, while these "fundamental tenets of Delaware corporate law provide for a separation of control and ownership,"[] the stockholder franchise has been characterized as the "ideological underpinning" upon which the legitimacy of the directors' managerial power rests. [*Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659 (Del.Ch. 1988).] (footnotes omitted)
>
> Maintaining a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation is dependent upon the stockholders' unimpeded right to vote effectively in an election of directors. This Court has repeatedly stated that, if the stockholders are not satisfied with the management or actions of their elected representatives on the board of directors, the power of corporate democracy is available to the stockholders to replace the incumbent directors when they stand for re-election. []
>
> In *Blasius*, Chancellor Allen set forth a cogent explanation of why judicial review under the deferential traditional business judgment rule standard is inappropriate when a board of directors acts for the primary purpose of impeding or interfering with the effectiveness of a shareholder vote, especially in the specific context presented in *Blasius* of a contested election for directors:
>
> [T]he ordinary considerations to which the business judgment rule originally responded are simply not present in the shareholder voting context. That is, a decision by the board to act for the primary purpose of preventing the effectiveness of a shareholder vote inevitably involves the question who, as between the principal and the agent, has authority with respect to a matter of internal corporate governance. That, of course, is true in a very specific way in this case which deals with the question who should constitute the board of directors of the corporation, but it will be true in every instance in which an incumbent board seeks to thwart a shareholder majority. A board's decision to act to prevent the shareholders from creating a majority of new board positions and filling them does not involve the exercise of the corporation's power over its property, or with respect to its rights or

> obligations; rather, it involves allocation, between shareholders as a class and the board, of effective power with respect to governance of the corporation . . .. Action designed principally to interfere with the effectiveness of a vote inevitably involves a conflict between the board and shareholder majority.

The Company's entire argument depends upon its contention that the Proposal improperly interferes with directors' fiduciary discretion, but as this discussion demonstrates the Proposal embraces the Delaware Supreme Court view of the appropriate role of shareholders vis-à-vis the board of directors. Consider the logic behind the Company's argument. The Board chose to adopt a majority vote standard for the election of directors. The Board's adoption of a majority vote standard gave Company shareholders the right to vote "For" or "Against" nominees to the Board, or to abstain from voting. The votes have legal consequence, as the Board surely intended. As facilitated by the 2006 amendment to DCGL Section 141(b), the Company adopted a director resignation policy providing that Board nominees submit an irrevocable resignation conditioned on their failure to be reelected under the majority vote standard. The resignation requirement conditioned on failure to gain majority shareholder support was necessitated by the Board's concern that absent such a resignation requirement, a director who is not reelected would simply continue to serve on the Board by operation of the law despite shareholders' legal vote. The Company's resignation policy, beyond simply requiring the conditional resignation, empowers the Board to decide whether to accept or reject the tendered resignation.

It is important to note that the DCGL Section 141(b) amendments permitting a director resignation conditioned on his or her failure to receive majority shareholder support did not speak to a post-election process by a board to determine the effectiveness of the resignation. In this context consider that the Proposal does not seek to preclude directors from strong control of the results of director elections, despite the clear statements from the Delaware Supreme Court emphasizing shareholders' rights. Rather, the Proposal requests that when shareholders cast a majority vote against an incumbent director to the Board that the other directors accept that nominees' tendered resignation unless the Board determines it has a compelling reason or reasons not to do so. It is a very measured proposition. Yet the Company argues that if the Board must articulate a compelling reason to keep that director on the board that this can only be done by the Board ignoring its fiduciary duties. The opinion of Delaware counsel discusses the Board process for considering a director's resignation. It states:

> 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. Ref. 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.

First, as we have demonstrated above, accepting a resignation is not a business decision. Second, the argument that considering whether there is a compelling reason not to accept the resignation "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" is an unsupported and illogical assertion. The factors the Board must consider include why the nominee did not receive a majority vote, past and future contributions to the board, and the implications of accepting the resignation. The Board could simply add to this list "consideration of the director failing to be elected by virtue of not receiving the necessary level of shareholder support."

The Proposal is Not a Removal Provision or Bylaw that Contravenes Delaware Law

The Company also argues that the Proposal would effect the "removal" of a director contravening DGCL Section 141(k) by requesting that a "holdover" director's resignation be automatically effective following a second consecutive annual election defeat. The Company's argument, if correct, would eviscerate the director election voting rights of shareholders in Delaware corporations. The Company has established a majority of the votes cast standard for the annual election of directors and Section 141(k) has a more demanding "majority of the shares then entitled to vote" standard. The Company conflates a removal action against one or more directors with the director election process that may result in an incumbent director or directors failing to be reelected and leaving the board through resignation. The logical conclusion of the Company's removal argument is that a company with the common "majority of votes cast" director election standard, rather than Section 141(k)'s more demanding "majority of the shares then entitled to vote" standard, could not require an unelected incumbent director to resign or otherwise leave the board. A clear reading of the DGCL sections 141(k) and Section 216 addressing the vote requirement for director elections at an annual meeting of shareholders indicate the Section 141(k) vote standard does not pertain to director election votes that may result in directors leaving a corporate board. As quoted above, in *MM Companies* the Delaware Supreme Court stated:

> Maintaining a proper balance in the allocation of power between the stockholders' right to elect directors and the board of directors' right to manage the corporation is dependent upon the stockholders' unimpeded right to vote effectively in an election of directors.

Contrast the Company's argument with the Delaware Supreme Court's ruling. The Company's removal argument holds that it would be a violation of Delaware law for an incumbent director nominee who twice failed to receive the requisite level of shareholder support for election to be required to tender his or her resignation for board acceptance. On the other hand, the Delaware Supreme Court holds that shareholders must have the "unimpeded right to vote effectively." The Company's removal argument fails.

The Company Does Not Lack the Power to Implement the Proposal

The Company makes the argument under Rule 14a-8(i)(6) that it lacks the power and authority to implement the Proposal. As outlined above, the Proposal would not, if implemented, cause the

Company to violate Delaware law. Implementation of the Proposal's request for a director resignation bylaw with provisions as outlined in the Proposal as a replacement for its current resignation policy would not cause the Company and its Board to violate its fiduciary duties to the Company or its stockholders, nor would it affect a removal of directors in violation of DGCL.

CONCLUSION

For the reasons stated above, the Fund requests that the Staff not concur with the Company's position that the Fund's Proposal may be excluded under Rule 14a-8(i)(2) or Rule 14a-8(i)(6), as to do so would severely undermine the director election voting rights of shareholders under DGCL. We would gladly provide any additional information regarding this matter.

Sincerely,

Ed Durkin

Edward J. Durkin

cc. Bruce Toth, Winston & Strawn LLP BToth@winston.com
Harry Kemp, Lear Corporation

WINSTON & STRAWN LLP

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March 15, 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 supplement the Company's no action request, submitted January 13, 2024 (the "***No Action Request***"), regarding a stockholder proposal (the "***Proposal***") submitted by the North Atlantic States Carpenters Pension Fund (the "***Proponent***").

On February 23, 2024, vice chancellor J. Travis Laster of the Delaware Court of Chancery issued an opinion in *West Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, ("***Moelis***") invalidating certain provisions of governance arrangements that unlawfully constrained the board's ability to use its judgment to manage the company and therefore violated Section 141(a) of the Delaware General Corporation Law ("***DGCL***"). *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 2024 Del. Ch. LEXIS 52. In its decision, the court affirmed that "[i]nternal corporate governance agreements [like the Moelis stockholder agreement] that do not appear in the charter and deprive boards of a significant portion of their authority contravene Section 141(a) [of the DGCL]" and, as such, are facially invalid. Moelis, at *2.

Like the stockholder agreement in Moelis, the Bylaw Provision contemplated by the Proposal (the "***Bylaw Provision***") is an internal governance arrangement which improperly constrains the Company's Board of Directors' (the "***Board's***") discretion in contravention of its fiduciary duties under Delaware law. Bylaws are inherently "internal governance arrangements" and thus subject to DGCL Section 141(a). *Moelis*, at *2 (citing *Quadrant Structured Prods. Co. v. Vertin*, 2014 WL 5465535, at *3). Internal governance arrangements are facially invalid if they improperly restrict the Board in the application of its decision-making ability and "preclude [directors] from fully discharging their fiduciary duties to the corporation and its shareholders." *Moelis*, at *68–*69.

The Bylaw Provision, if implemented, would prevent the Board from discharging its fiduciary duties. First, the Bylaw Provision would require the Board to accept the resignation of a director who failed to receive the requisite number of votes for their reelection in an uncontested election unless it can demonstrate a "compelling reason" to reject such resignation. As articulated in the No Action Request, to have meaning, the "compelling reason" requirement would prevent the Board from rejecting a director's resignation where its fiduciary duties would otherwise require it to do so. Citing its decision in *CA, Inc. v. AFSCME Employees Pension Plan*, where a bylaw provision was found invalid because it would cause the board to approve payment of proxy expenses in cases where the board had decided that such payment was not in the best interests of the company, the court in *Moelis* held that the pre-approval requirements would require the board to act contrary to its fiduciary duties, and therefore violate Section 141(a) of the DGCL. *Moelis*, at *109–*110. Further, the Bylaw Provision would *eliminate* the Board's decision-making ability in the event a director failed to receive the requisite number of votes a second year in a row, as it provides for automatic termination of the director's service in such circumstances. As with the "compelling reason" standard, the Bylaw Provision would require acceptance of a resignation even where the Board, through the application of its fiduciary duties, believes in good faith that the resignation is not in the best interest of the Company or its stockholders.

Because the Bylaw Provision contemplated by the Proposal mandates that the Board make determinations that are contrary to those made in accordance with the directors' fiduciary duties, as discussed more in depth in the No Action Request and in the revised legal opinion furnished to the Company by Richards, Layton & Finger, P.A., attached hereto as Exhibit A, the provision violates Section 141(a) of the DGCL.

CONCLUSION

We respectfully request that the Staff consider this supplemental letter in conjunction with the No Action Request and confirm that no enforcement action will be taken if the Company excludes the Proposal from its 2024 Proxy Materials for the 2024 Annual Meeting of stockholders.

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: Revised Delaware Counsel Opinion

cc: Harry Kemp, Lear Corporation
Amanda Pontes, Lear Corporation
Richards, Layton & Finger, P.A.
David Minasian, North Atlantic States Carpenters Pension Fund
Joseph Byrne, North Atlantic States Carpenters Pension Fund
Edward Durkin, United Brotherhood of Carpenters

Exhibit A

RICHARDS LAYTON & FINGER 125 YEARS

March 15, 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.

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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); *West Palm Beach Firefighters' Pension Fund v. Moelis & Company*, 2024 WL 747180, at *5 (Del. Ch. Feb. 23, 2024 (invalidating provisions of a stockholder agreement that improperly constrained the board's authority to manage the company by, among other things, requiring the approval of the founder for the company to take most actions that are typically taken by board).

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.

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[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.

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.

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