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

DIVISION OF
CORPORATION FINANCE

April 22, 2024

Timothy Ring
MetLife, Inc.

Re: MetLife, Inc. (the "Company")
Incoming letter dated February 6, 2024

Dear Timothy Ring:

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 revisions to the 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 bases 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: David Minasian
North Atlantic States Regional Council of
Carpenters

MetLife, Inc.
200 Park Avenue
New York, NY 10166-0005

Timothy Ring
Senior Vice President and Corporate Secretary
Tel (212) 578-2640

February 6, 2024

Via Online Submission Form

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

Re: MetLife, Inc. – Stockholder Proposal Submitted by the North Atlantic States Carpenters Pension Fund

Ladies and Gentlemen:

I am writing on behalf of MetLife, Inc., a Delaware corporation ("MetLife" or the "Company"), regarding a stockholder proposal and statement in support thereof dated December 13, 2023 (collectively, the "Proposal") from Joseph Byrne, Trustee of the North Atlantic States Carpenters Pension Fund (the "Proponent") for inclusion in the proxy statement to be distributed to the Company's stockholders in connection with the 2024 annual meeting of stockholders (the "Proxy Materials").

The Company respectfully requests that the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons set forth below.

In accordance with relevant Staff guidance, we are submitting this letter, together with the Proposal and related attachments, to the Commission through the Commission's online Shareholder Proposal Form. In accordance with Rule 14a-8(j), we are sending a copy of this letter and its attachments concurrently to the Proponent. We respectfully remind the Proponent that pursuant to Rule 14a-8(k), a copy of any additional correspondence to the Commission or the Staff with respect to the Proposal should be furnished to the Company concurrently.

THE PROPOSAL

The Proposal provides as follows:

> *Resolved: That the shareholders of MetLife, Inc. ("Company") hereby request that the board of directors take the necessary action to amend its 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 amended 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 not 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 submission from the Proponent, including the Proposal and the supporting statement, is set forth in Exhibit A.

BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company respectfully requests that the Staff concur with the Company's view that the Proposal may be excluded from the Proxy Materials in reliance on:

- Rule 14a-8)(i)(8)(ii) because the implementation of the Proposal would remove a director from office before his or her term expired;
- Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law; and
- Rule 14a-8(i)(6) because the Company lacks the power and authority to implement the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(8)(ii) Because the Implementation of the Proposal Would Remove a Director from Office Before His or Her Term Expired.

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

As a Delaware company, the Company is subject to the Delaware General Corporation Law (the "DGCL"). Under Delaware law and pursuant to Section 2.05 of the Company's Amended and Restated By-Laws (the "By-Laws"), the Company's directors are subject to annual elections, for a term "expiring at the next annual election of stockholders and until such director's successors shall have been elected and qualified, or until such director's earlier death, resignation or removal." There are two crucial, interrelated but distinct concepts in this provision — (1) that directors are subject to election by stockholders annually; and (2) that the term of office of directors is until the next annual meeting and until their successors are elected and qualified or until their death, resignation or removal. The Proposal improperly inhibits the second concept: the term of office of a director.

Pursuant to Delaware law and the By-Laws, the term of office of a director extends until the election of a qualified successor. This provision ensures continuity in governance and allows the Board to maintain compliance with applicable Commission and exchange listing rules relating to Board composition. The only alternative for this provision is such director's "earlier death, resignation or removal." How these events cut short a director's term of office is self-explanatory. In the context of the Proposal, however, it is important to distinguish between "resignation" and "removal." "Resignation," as opposed to "removal," implies a voluntary act on the part of a director. By requesting that the Board of Directors (the "Board") adopt a mandatory resignation policy — one that does not give any kind of discretion on the part of the director and inhibits the proper exercise of the directors' business judgment in whether or not to accept that resignation, the Proposal is collapsing the concept of "resignation" into the concept of "removal." Thus, what the Proposal is really attempting to do is to remove a director from office prior to the

end of the director's term which, based on established precedent, makes the Proposal excludable in reliance on Rule 14a-8(i)(8).

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

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

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

Rule 14a-8(i)(2) permits a company to exclude a proposal if its implementation would cause the company to violate state, federal or foreign law applicable to the company. As discussed below and for the reasons set forth in the legal opinion provided by Richards, Layton & Finger, the Company's Delaware counsel, attached hereto as Exhibit B (the "Delaware Law Opinion"), we believe that the Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

The Staff has on numerous occasions permitted exclusion under Rule 14a-8(i)(2) of proposals that would cause companies to violate state law by impermissibly infringing on the managerial authority of the board of directors and preventing directors from discharging their fiduciary duties to the company. For example, in *Bank of America Corp.* (Feb. 23, 2012), the Staff permitted exclusion under Rule 14a-8(i)(2) of a proposal that requested the company take action, including amending the bylaws and any other actions needed, to "minimize" the indemnification rights afforded to directors. In its response to the company's no-action request, the Staff stated that "implementation of the proposal would cause Bank of America to violate state law," where the supplied opinion of counsel had opined that the proposal violated Section 141(a) of the DGCL by removing from the board of directors its ability to determine whether (and to what extent) to provide indemnification to the company's directors. The Staff also allowed exclusion of the proposal to *Oshkosh Corp.* (Nov. 21, 2019), which requested that the company amend its bylaws to require that a director who received less than a majority vote be removed from the board "immediately." The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(2) because implementing it would cause the company to violate Wisconsin law, which provided two methods for the removal of directors—by a stockholder vote or by a judicial proceeding—and neither was immediate or an action the company or its board could unilaterally take. *See also Johnson & Johnson* (Feb. 16, 2012) (permitting exclusion under Rule 14a-8(i)(2) of a proposal that would have required adoption of a bylaw that would disqualify directors from service on the company's compensation committee if they received "no" or "withhold" votes in excess of 10% of the votes cast, where the supplied legal opinion opined that the proposal violated state law by interfering with the exclusive grant of authority given to the board of directors to appoint directors to committees of the board); *Gillette Co.* (Mar. 10, 2003) (permitting exclusion under Rule 14a-8(i)(2) of a proposal seeking a board policy establishing procedures for implementing shareholder proposals that receive majority support, where the supplied legal opinion argued the proposal would force the board of directors to implement shareholder proposals without considering their merit and that to do so would remove from the board of directors the judgment required to satisfy its duties under Delaware law).

Here, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal impermissibly seeks to limit the decision-making authority of the Board in contravention of its fiduciary duties. The By-Laws require an incumbent director to promptly tender a conditional resignation to the Board, subject to acceptance by the Board, if the director does not receive the required vote for election in an uncontested election. The By-Laws further provide that the Governance and Corporate Responsibility Committee of the Board (the "Governance Committee") will make a recommendation to the Board as to whether to accept or reject the resignation. The Governance Committee, in making its recommendation, and the Board, in making its determination, are specifically permitted to take into consideration any factors or other information that they deem relevant or appropriate, including, without limitation, the length of service and qualifications of the director who has tendered his or her resignation and the director's contributions to the Company and the Board. The Proposal requests that the Board amend the By-Laws to require the Board to accept a director's resignation upon failure to obtain the required vote in an uncontested election "absent the finding of a compelling reason or reasons

to not accept the resignation." The amendments to the By-Laws contemplated by the Proposal would impose a "compelling reason or reasons" standard on the decision made by the Board without any exception for compliance with the Board's fiduciary duties. In addition, if the Board determined that there was a "compelling reason or reasons" not to accept a director's resignation, then such director would continue to serve as a "holdover" director. The Proposal, if implemented, would also require the Board to amend the Bylaws so that, if such "holdover" director is not 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."

As discussed in detail in the Delaware Law Opinion, Section 141(a) of the DGCL states that "[t]he business and affairs of every corporation organized under [the DGCL] shall be managed by or under the direction of a board of directors, except as may be otherwise provided in [the DGCL] or in its certificate of incorporation." Neither the DGCL nor the Company's certificate of incorporation modifies the ability of the Board to manage the business and affairs of the Company with respect to the acceptance of director resignations. As a result, the directors are required to exercise their management power in respect of the acceptance of director resignations consistent with their fiduciary duties of loyalty and care, which require the Board to act in the best interests of the Company and its stockholders. As further discussed in the Delaware Law Opinion, Delaware courts have held that bylaws that dictate that decisions be made by the board of directors without regard for the directors' fiduciary duties are invalid as a matter of Delaware law. The Proposal purports to do just that, by imposing a "compelling reason or reasons" standard that mandates a substantive decision on the part of the Board without regard to the application of the directors' fiduciary duties. Accordingly, the Delaware Law Opinion concludes that the Proposal violates Delaware law because it requires the Board to amend its By-Laws to adopt an exclusive "compelling reason or reasons" standard that does not permit the Board to consider its fiduciary duties. More specifically, the Proposal could require the Board to accept a resignation even though the directors do not believe that such acceptance would be in the best interests of the Company and its stockholders. Such acceptance of a resignation by the Board would not be in accordance with the directors' fiduciary duties and would accordingly cause the Company to violate Delaware law. Accordingly, just as in *Bank of America Corp.*, *Oshkosh*, *Johnson & Johnson*, and the other precedents cited above, the Proposal may properly be excluded under Rule 14a-8(i)(2) because, as supported by the Delaware Law Opinion, implementing the Proposal would cause the Company to violate state law.

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

Rule 14a-8(i)(6) allows a company to exclude a proposal if the company would lack the power or authority to implement the proposal. As described above, the Proposal would, if implemented, cause the Company to violate Delaware law. The Staff has on numerous occasions permitted exclusion under Rule 14a-8(i)(6) of proposals that would cause the company to violate the law of the jurisdiction of its incorporation. *See Arlington Asset Investment Corp.* (Apr. 23, 2021) (permitting exclusion of proposal that would violate Virginia law); *eBay Inc.* (Apr. 1, 2020)

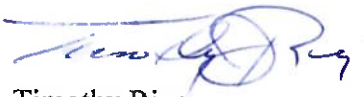
(permitting exclusion of proposal that would violate Delaware law); *Trans World Entertainment Corp.* (May 2, 2019) (permitting exclusion of proposal that would violate New York law); *IDACORP, Inc.* (Mar. 13, 2012) (permitting exclusion of proposal that would violate Idaho law); *NiSource Inc.* (Mar. 22, 2010) (permitting exclusion of proposal that would violate Delaware law); *Schering-Plough Corp.* (Mar. 27, 2008) (permitting exclusion of proposal that would violate New Jersey law); *AT&T, Inc.* (Feb. 19, 2008) (permitting exclusion of proposal that would violate Delaware law); *Noble Corp.* (Jan. 19, 2007) (permitting exclusion of proposal that would violate Cayman Islands law).

CONCLUSION

For the foregoing reasons, the Company respectfully requests your confirmation that the Staff will not recommend any enforcement action to the Commission if the Company excludes the Proposal from the Company's Proxy Materials and that the Staff will grant the Company a waiver of the filing requirement.

If you have any questions concerning the above, please do not hesitate to call me at (212) 578-2640, or email me at tring@metlife.com.

Sincerely,



Timothy Ring
Senior Vice President and Corporate Secretary,
MetLife, Inc.

Attachments

cc: Joseph Byrne
David Minasian
Edward J. Durkin

Exhibit A

The Proposal

NORTH ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

United Brotherhood of Carpenters and Joiners of America

750 DORCHESTER AVENUE
BOSTON, MA 02125-1132

TELEPHONE (617) 268-3400
FAX (617) 268-0442

JOSEPH BYRNE
EXECUTIVE SECRETARY - TREASURER

SENT VIA OVERNIGHT USPS

December 13, 2023

Timothy J. Ring
Senior Vice President and
Corporate Secretary
MetLife, Inc.
200 Park Ave.
New York, NY 10166

Dear Mr. Ring:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the North Atlantic States Carpenters Pension Fund ("Fund"), for inclusion in the MetLife, Inc. ("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 Dminasian@nasrcc.org. Mr. Minasian will be available to discuss the proposal on Tuesday, December 26, or Tuesday, January 9, 2024, 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 MetLife, Inc. ("Company") hereby request that the board of directors take the necessary action to amend its 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 amended 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 not 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 amend its 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 meeting of shareholders. A Company resignation bylaw 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 proposed new director resignation bylaw will set a more demanding standard of review for addressing director resignations then that contained in the Company's current resignation bylaw. The resignation bylaw will require the reviewing directors to articulate a compelling reason or reasons for not accepting a tendered resignation and allowing an un-elected 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 director election voting as a more consequential governance right.

Exhibit B

The Delaware Law Opinion

RICHARDS LAYTON & FINGER

Attorneys at Law

February 6, 2024

MetLife, Inc.
200 Park Avenue
New York, New York 10166

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

Ladies and Gentlemen:

We have acted as special Delaware counsel to MetLife, Inc., 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 13, 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 January 4, 2000, as amended by the Certificates of Designation as filed with the Secretary of State on April 7, 2000, June 10, 2005, June 14, 2005 and October 27, 2010, respectively, as amended by the Certificate of Amendment as filed with the Secretary of State on April 29, 2011, as amended by the Certificate of Retirement as filed with the Secretary of State on November 5, 2013, as amended by the Certificate of Amendment as filed with the Secretary of State on April 29, 2015, as amended by the Certificate of Designation as filed with the Secretary of State on May 28, 2015, as amended by the Certificate of Elimination as filed with the Secretary of State on November 3, 2015, respectively, as amended by the Certificate of Amendment as filed with the Secretary of State on October 23, 2017, as amended by the Certificates of Designation as filed with the Secretary of State on March 21, 2018, May 31, 2018, January 8, 2020 and September 9, 2020, as amended by the Certificate of Elimination as filed with the Secretary of State on June 29, 2021, respectively, (collectively, the "Certificate of Incorporation"); (ii) the Amended and Restated By-Laws of the Company, effective as of October 3, 2023 (the "Bylaws"); and (iii) the Proposal.

With respect to the foregoing documents, we have assumed: (i) the authenticity of all documents submitted to us as originals; (ii) the conformity to authentic originals of all documents submitted to us as copies; (iii) the genuineness of all signatures and the legal capacity of natural persons; and (iv) that the foregoing documents, in the forms thereof submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinion as expressed herein. We have not reviewed any document other than the documents listed above for purposes of

rendering this opinion, and we assume that there exists no provision of any such other document that bears upon or is inconsistent with our opinion as expressed herein. In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, the statements and information set forth therein and the additional factual matters recited or assumed herein, all of which we assume to be true, complete and accurate in all material respects.

THE PROPOSAL

The Proposal states the following:

> **Resolved:** That the shareholders of MetLife, Inc. ("Company") hereby request that the board of directors take the necessary action to amend its 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 amended 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 not 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, the Proposal, if implemented, would, in our opinion, violate Delaware law in two respects: (i) it requires the board of directors of the Company (the "Board") to accept a resignation in circumstances where doing so would violate its fiduciary duties and (ii) it effects the removal of a director without the statutorily required vote.

DISCUSSION

The Proposal would violate Delaware law if implemented.

The Proposal requests that the Board amend the provision of the Bylaws that requires each director who fails to receive a majority of the votes casts in an uncontested election to submit a conditional resignation. The amendments to 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 amendments to 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 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. Because the Proposal is designed to require 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 establish, for the removal of any such holdover director, a voting standard based on the votes cast for such director's election at the second annual meeting. Because 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 less than a majority of the shares entitled to vote at an election of directors – which the Proposal, if adopted as proposed, would do because it would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of votes cast, a lower standard than the majority of the shares entitled to vote – 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. *Cf. Frechter v. Zier*, 2017 WL 345142, at *4 (Del Ch. Jan. 24, 2017) (invalidating a provision of the bylaws purporting to change the statutory default for the removal of directors). 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, because 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 less than a majority of the shares entitled to vote at an election of directors – which the Proposal, if adopted as proposed, would do because it would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of votes cast, a lower standard than the majority of the shares entitled to vote – it violates Section 141(k) of the

[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.

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.

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 the Company and Sidley Austin LLP 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.

CSB/JJV