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

DIVISION OF
CORPORATION FINANCE

March 15, 2024

Sanjay M. Shirodkar
DLA Piper LLP

Re: Verizon Communications Inc. (the “Company”)
Incoming letter dated January 4, 2024

Dear Sanjay M. Shirodkar:

This letter is in response to your correspondence concerning the shareholder proposal (the “Proposal”) submitted to the Company by the New York City 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). We note that in the opinion of Delaware counsel, implementation of the Proposal would cause the Company to violate state law. 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: Edward J. Durkin
United Brotherhood of Carpenters and Joiners of America

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January 4, 2024

VIA ELECTRONIC SUBMISSION

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

Electronic Submission via Shareholder Proposal Portal

Re: Verizon Communications Inc.
Exclusion of Shareholder Proposal Submitted by the New York City Carpenters Pension Fund

Ladies and Gentlemen:

We are writing on behalf of our client, Verizon Communications Inc., a Delaware corporation (the "***Company***"), to inform you of the Company's intention to exclude from its proxy statement and form of proxy to be filed and distributed in connection with its 2024 Annual Meeting of Shareholders (collectively, the "***2024 Proxy Materials***"), in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), the enclosed shareholder proposal (the "***Proposal***") and statements in support thereof received from the New York City Carpenters Pension Fund (the "***Fund***"), with the United Brotherhood of Carpenters and Joiners of America authorized to act on the Fund's behalf (the Fund and the United Brotherhood of Carpenters and Joiners of America are referred to collectively as the "***Proponents***"). The Company hereby requests confirmation that the staff of the Division of Corporate Finance (the "***Staff***") of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2024 Proxy Materials, which the Company intends to file with the Commission not less than 80 days after the date of this letter.

In accordance with the Staff announcement published on November 7, 2023, we are submitting this letter electronically to the Staff through the Commission's online shareholder proposal form. Pursuant to Rule 14a-8(j), a copy of this submission is also being sent to the Proponents as notification of the Company's intention to omit the Proposal from the 2024 Proxy Materials. Rule 14a-8(k) and SLB 14D provide that a shareholder proponent is required to send to the company a copy of any correspondence that the proponent elects to submit to the Commission or the Staff. Accordingly, we hereby inform the Proponents that, if any of them elect to submit additional correspondence to the Commission or the Staff relating to the Proposal, the Proponent(s) should concurrently furnish a copy of that correspondence to the undersigned.

THE PROPOSAL

On November 21, 2023, the Company received a letter from the Proponents submitting the Proposal for inclusion in the 2024 Proxy Materials. The text of the Proposal is set forth below and the Proposal and supporting statement are attached hereto as Exhibit A.

> **Resolved:** That the shareholders of Verizon Communications 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.

BASES FOR EXCLUSION

We hereby request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to the following:

I. Rule 14a-8(i)(1) of the Exchange Act because the subject of the Proposal is not a proper subject for action by shareholders under the Delaware General Corporation Law (the "***DGCL***");

II. Rule 14a-8(i)(2) of the Exchange Act because implementation of the Proposal would cause the Company to violate Delaware law;

III. Rule 14a-8(i)(6) of the Exchange Act because the Company lacks the power and authority to implement the Proposal;

IV. Rule 14a-8(i)(3) of the Exchange Act because the Proposal is materially false and misleading; and

V. Rule 14a-8(i)(10) of the Exchange Act because the Company has already substantially implemented the Proposal.

ANALYSIS

I. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(i)(1) OF THE EXCHANGE ACT BECAUSE THE SUBJECT OF THE PROPOSAL IS NOT A PROPER SUBJECT FOR ACTION BY SHAREHOLDERS UNDER THE DGCL.

A. Rule 14a-8(i)(1) Background

Under Rule 14a-8(i)(1) of the Exchange Act, a company may exclude a shareholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." The Staff has indicated that it will not recommend enforcement action if a company excludes a precatory proposal because the recommended action would violate state law or would not be a proper subject for shareholder action under state law. *See AT&T Inc.* (Feb. 7, 2006) (finding a basis for exclusion, under Rule 14a-8(i)(2), of a proposal recommending that a board of directors adopt cumulative voting as a bylaw, which could not be implemented without violating Delaware law); *MeadWestvaco Corp.* (Feb. 27, 2005) (finding a basis for exclusion, under Rule 14a-8(i)(2), of a proposal recommending that the company adopt a bylaw containing a per capita voting standard, where the company contended that, under Delaware law, per capita voting could only be adopted through an amendment to the certificate of incorporation, and that, even if such an amendment were requested, directors could not implement such an amendment unilaterally); *Pennzoil Corp.* (Mar. 22, 1993) (stating that the Staff would not recommend enforcement action against Pennzoil for excluding a precatory proposal, under Rule 14a-8(i)(l), that asked directors to adopt a bylaw that could be amended only by the shareholders because, under Delaware law, "there is a substantial question as to whether ... the directors may adopt a bylaw provision that specifies that it may be amended only by shareholders").

B. The Proposal is not a proper subject for action by shareholders under the DGCL.

Implementation of the Proposal would require the Board of Directors of the Company (the "***Board***") to amend Section 3.04(b)(1) and Section 4.05(c) of the Company's existing Bylaws, as amended, effective as of September 30, 2022 (the "***Bylaws***"). If so amended, Section 3.04(b)(1) would, in sum, (i) require the Board to have and state a "compelling reason" for rejecting the conditional resignation of any incumbent director who does not obtain the required majority vote in an uncontested election and (ii) require that a conditional resignation of any director who does not obtain the required majority vote in two consecutive uncontested elections become automatically effective 30 days after the election, leaving no circumstance in which the Board could exercise its managerial discretion to reject such a resignation. In addition, enabling amendments would have to be made to Section 4.05(c).

Section 211(b) of the DGCL empowers the transaction of "proper business" at each annual meeting of shareholders. 8 *Del. C.* § 211(b). The Proposal does not constitute "proper business" because it conflicts with Delaware law. As discussed in Section II below, the Proposal is not a proper subject for action by shareholders under Delaware law because its implementation would require the Company to violate the DGCL in several ways: (i) the requirements of the Proposal would supersede the discretion of the Board and infringe upon its managerial authority under the DGCL; (ii) implementation of the Proposal would require members of the Board to violate their fiduciary duties; and (iii) the requirement that a conditional resignation becomes automatically effective if a "holdover" director is not re-elected at the next annual

election of directors is a forced resignation by a Board member and, in effect, a backdoor removal of a director in contravention of the DGCL. As such, the Proposal is not proper under state law because its implementation would violate Delaware law.

The Company notes that the Proposal may be excluded under Rule 14a-8(i)(1) of the Exchange Act, even though it is cast in precatory terms. The Proponents cannot end run the aforementioned bases for exclusion simply because the Proposal is cast in precatory terms. Even though the Proposal states that the shareholders only "request that the board of directors take the necessary action," the Proposal must nevertheless be excluded because the underlying action urged by the Proponents itself violates Delaware law. Using a precatory format will only save a proposal from exclusion if the action that the proposal recommends can be lawfully implemented by directors.

Because its implementation would cause the Company to violate Delaware law, the Proposal is not a proper subject for action by shareholders under the DGCL and accordingly, should be excluded pursuant to Rule 14a-8(i)(l).

II. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(i)(2) OF THE EXCHANGE ACT BECAUSE IMPLEMENTATION OF THE PROPOSAL WOULD CAUSE THE COMPANY TO VIOLATE DELAWARE LAW.

A. Rule 14a-8(i)(2) Background

Rule 14a-8(i)(2) of the Exchange Act permits a company to exclude a shareholder proposal from its proxy materials "if the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject." As noted above, the Company is incorporated in the State of Delaware and, accordingly, is subject to, and governed by, the DGCL. For reasons discussed below and in the opinion of counsel attached hereto as Exhibit B (the "***Delaware Law Opinion***"), implementation of the Proposal would cause the Company to violate the DGCL. Accordingly, the Company respectfully submits that it can properly exclude the Proposal from the 2024 Proxy Materials under Rule 14a-8(i)(2).

The Staff previously has found a basis to concur with several no-action requests to exclude shareholder proposals requesting that companies implement majority voting standards for director elections in direct conflict with state law. For example, in *Reliance Steel & Aluminum Co.* (Mar. 10, 2011), a shareholder submitted a proposal requesting that the company adopt a director majority voting standard bylaw, which also explicitly required a director who did not receive a majority of votes cast to resign. Reliance Steel submitted to the Staff that the adoption of the majority vote standard proposed conflicted with the cumulative voting requirements under applicable California law and that, therefore, the proposal was excludable under Rules 14a-8(i)(2) and 14a-8(i)(6) as well as Rule 14a-8(i)(3). The Staff concurred that the proposal could be properly excluded under Rule 14a-8(i)(2).

Similarly, in *PG&E Corp.* (Feb. 14, 2006), the Staff concurred with the exclusion, pursuant to Rule 14a-8(i)(2), of a shareholder proposal requesting that the board of directors "initiate the appropriate process" to amend the company's governance documents to provide for majority voting for directors after the company submitted that such amendments conflicted with a California statute requiring directors to be elected by plurality vote. *See also Sigma Designs, Inc.* (Jun. 9, 2015) (permitting the exclusion of a

proposal requesting the board of directors to amend the company's governance documents to provide for majority voting where the company submitted that, under California law, a majority vote standard could only be adopted if a company first eliminated cumulative voting, which the company had not done); *IDACORP, Inc.* (Mar. 13, 2012) (permitting the exclusion of a proposal requesting an amendment to the company's bylaws after the company submitted that, under Idaho law, an amendment to the articles would be required); *Bank of America Corp*. (Feb. 23, 2012), (permitting the exclusion of a proposal under Rule 14a-8(i)(2) that requested the company take action, including amending the bylaws and any other actions needed, to "minimize" the indemnification rights afforded to directors, where 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 its ability to determine whether (and to what extent) to provide indemnification to the company's directors); *Johnson & Johnson* (Feb. 16, 2012) (permitting exclusion of a proposal under Rule 14a-8(i)(2)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); *PG&E Corp.* (Feb. 25, 2008) (concurring with the exclusion of a proposal requesting that the company adopt cumulative voting in director elections where the company submitted that it had previously adopted majority voting, and state law prevented the company from having both majority voting and cumulative voting); *AT&T Inc.* (Feb. 19, 2008) (concurring with the exclusion of a proposal requesting amendment of the company's bylaws allowing shareholder action by written consent where the company submitted that such an amendment was only valid if set forth in the company's certificate of incorporation); *The Boeing Co.* (Feb. 19, 2008) (same); *Hewlett Packard Co.* (Jan. 5, 2005) (concurring with the exclusion of a proposal requesting amendment of the company's bylaws altering the "one share, one vote" standard set forth under Delaware corporate law where the company submitted that such an amendment was only valid if set forth in the company's certificate of incorporation).

B. Implementation of the Proposal would cause the Company to violate the DGCL because the requirements of the Proposal would supersede the discretion of the Board and infringe upon its managerial authority under the DGCL.

Section 141(a) of the DGCL contains the following language expressly clarifying as a statutory matter that the directors' managerial authority may be delimited only by a certificate of incorporation approved by the shareholders:

> 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**. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

8 *Del. C.* § 141(a) (***emphasis added***). There is no such provision in the Company's restated Certificate of Incorporation (the "***Certificate of Incorporation***"), and Section 4.01 of the Bylaws follows the mandate of the DGCL by stating that "[a]ll powers vested by law in the corporation shall be exercised

by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors." Even if modified, Delaware certificates of incorporation may only contain provisions governing the business and affairs of the corporation that are not "contrary to the laws" of Delaware, including the DGCL, and do not "achieve a result forbidden by …public policy." *Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 108 (Del. 1952); *Jones Apparel Grp., Inc. v. Maxwell Shoe Co.*, 883 A.2d 827, 847 (Del. Ch. 2004).

Section 141(a) of the DGCL establishes the "bedrock statutory principle of director primacy," and even controlling shareholders cannot usurp the authority of the board of directors they elect. *Fox v. CDX Holdings, Inc.*, 2015 WL 4571398, at *24 (Del. Ch. July 28, 2015), aff'd, 141 A.3d 1037 (Del. 2016). As the Delaware Supreme Court has long held: "A cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than stockholders, manage the business and affairs of the corporation." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). That "stockholders must live with the informed …and good faith …business decisions of the directors unless the DGCL requires a [stockholder] vote…. [i]s a central premise of [Delaware] law, which vests most managerial power over the corporation in the board and not in the stockholders." *Hollinger Inc. v. Hollinger Int'l, Inc.*, 858 A.2d 342, 387 (Del. Ch. 2004). In short, "[t]he board may not either formally or effectively abdicate its statutory power and its fiduciary duty to manage or direct the managing of the business and affairs of the corporation." In re. *Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at *59 (Del. Ch. May 6, 2021) (quoting *Grimes v. Donald*, 1995 WL 54441, at *9 (Del. Ch. Jan. 11, 1995), aff'd, 673 A.2d 1207 (Del. 1996)).

Delaware courts do distinguish between abdication and usurpation of management authority versus restrictions on board authority. *See, e.g.*, *Sample v. Morgan*, 914 A.2d 647, 671-73 & n.77 (Del. Ch. 2007) (rejecting argument that five-year restriction on new stock issuances in a stock purchase agreement was invalid as a matter of law, while accepting that restrictions could be inequitable and lead to viable breach of fiduciary duty claims under certain circumstances); and *Unisuper Ltd. v. News Corp.*, 2005 WL 3529317, at *6 (Del. Ch. Dec. 20, 2005) (upholding shareholders' agreement that granted shareholders an irrevocable veto right over poison pills).

With respect to the requirement in the Proposal that the Board have and state a "compelling reason" for rejecting the conditional resignation of any incumbent director who does not obtain a majority vote in an uncontested election, "it is well-established that stockholders of a corporation subject to the DGCL may not directly manage the business and affairs of the corporation." *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 232 (Del. 2008). The decision to reject or accept a resignation of a director is a business decision to be made by the Board, and that decision requires the Board to exercise its business judgment consistent with its fiduciary duties. *Louisiana Mun. Police Emps. Ret. Sys. v. Morgan Stanley & Co. Inc.*, 2011 WL 773316, at *6 (Del. Ch. Mar. 4, 2011). Such a business decision is multi-faceted and requires the consideration and balancing of many factors, including the tenure and qualifications of the director, the past and expected future contributions of the director, the impact of the director's retention or exclusion on the overall function of the Board and the Company, among other factors. Here, the Proposal seeks to supersede and infringe upon the Board's judgment with respect to its decision whether to reject a director resignation and would preclude a rejection even if the directors determine in the exercise of their good faith business judgment that a resignation is not in the best interests of the Company.

With respect to the requirement in the Proposal that a conditional resignation of any director who does not obtain the required majority vote in two consecutive uncontested elections becomes automatically effective 30 days after the election, it too leaves **no** circumstance in which the Board could exercise its managerial discretion to reject such a resignation even if the directors determine, in the exercise of their good faith business judgment, that such a resignation is not in the best interests of the Company. This portion of the Proposal cannot be viewed as a restraint on director action, rather than an intrusion into managerial decision making, because it is not a restriction on an action but is instead an involvement in the decision process for the purpose of determining the outcome of the decision. However, even if viewed as a restraint on director action, rather than an intrusion into managerial decision making, in this circumstance it would be invalid because Delaware law does not permit shareholders to deprive directors of the ability to exercise their full managerial power in circumstances where their fiduciary duties would otherwise require them to exercise their judgment. *CA, Inc*., 953 A.2d 239.

Further, the DGCL provides that directors' managerial authority may be delimited only by a certificate of incorporation approved by the shareholders, and the Proposal does not expressly seek the adoption of an amendment to the Certificate of Incorporation. Indeed, the Proposal would require an amendment to the Bylaws which would directly contravene the requirement that any limits to the directors' authority must be provided for in the Certificate of Incorporation. Even if the Proposal could be read to request such an amendment to the Certificate of Incorporation, a provision in the Certificate of Incorporation that purported to allow shareholders to usurp the Board's authority to decide in its good faith business judgment whether to accept or reject a fellow director's resignation would be invalid under Delaware law. Section 102(b)(1) of the DGCL permits a certificate of incorporation to limit the powers of a corporation unless such limitation would violate the laws of Delaware. 8 *Del. C.* § 102(b)(1). Thus, a Delaware certificate of incorporation cannot impose a limitation that violates a Delaware statute or public policy. Because the DGCL clearly mandates that the Board must be afforded the power to manage the business and affairs of the Company, the Board's statutory rights cannot be eliminated by a provision of any amendment to the Certificate of Incorporation. Delaware courts have repeatedly stressed that directors' statutory management authority is a "central premise," a "cardinal precept," and a "bedrock statutory principle" of Delaware law, and the state of Delaware has a strong public policy interest in assuring that directors maintain their statutory management authority. *Fox*, 2015 WL 4571398, at *24; *Aronson*, 473 A.2d at 811; *Hollinger Inc*., 858 A.2d at 387.

C. Implementation of the Proposal would cause the Company to violate the DGCL because the Proposal would require members of the Board to violate their fiduciary duties.

The Proposal would limit the directors' exercise of their fiduciary duties by preventing directors from deciding whether, in their good faith business judgment, the acceptance of a "holdover" director's resignation is in the best interests of the Company. Thus, the directors would be forced, as a result of the Proposal, to automatically accept the resignation of a "holdover" director who does not receive a majority of votes upon reelection, even if the rejection of the resignation, as determined by the directors in the exercise of their fiduciary duties, would otherwise be in the best interests of the Company. Essentially, the directors' obligation to abide by their fiduciary duties would be subordinated to the Proposal.

Under Delaware law, the Board cannot adopt an internal governance policy, whether though an amendment to the Bylaws or any other Board action, that prevents the Board in the future from exercising its managerial power and concomitant fiduciary duty to determine whether to accept or reject a fellow director's resignation. Delaware courts have held that a board cannot unilaterally adopt an internal governance provision that limits a future board's ability to take actions that the board believes will advance the corporation's best interests. *CA, Inc.*, 953 A.2d at 239-40.

For example, in *CA, Inc.*, the Delaware Supreme Court held that a proposed shareholder-adopted bylaw that mandated that the board of directors reimburse a shareholder for certain proxy expenses 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 shareholders may not bind future directors on matters involving the management of the company. *Id*.; *see also Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281 (Del. 1998) (invalidating a provision that under certain circumstances, would have prevented newly-elected directors from redeeming a rights plan for a six-month period); *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 Proposal requests the adoption of an amendment to the Bylaws that would eliminate the power of current and future directors of the Company to reject a "holdover" director's resignation if they are not re-elected by a majority vote, even in situations where the directors have determined in their good-faith business judgment that such a rejection is in the best interests of the Company. To the extent the Proposal purports to prevent the Board or any future Board from exercising its statutorily granted authority in determining whether to accept or reject a "holdover" director's resignation, the Proposal is inconsistent with Section 141(a) of the DGCL.

D. Implementation of the Proposal would cause the Company to violate the DGCL because the requirement that a conditional resignation becomes automatically effective in certain circumstances is a forced removal of a Board member in contravention of the DGCL.

Section 141(k) of the DGCL states: "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). There are two statutory exceptions to this rule that only apply to corporations with classified boards or cumulative voting, neither of which are applicable to the Proposal. Here, in the supporting statement to the Proposal, the Proponents suggest that "the amended bylaw will establish the shareholder vote as the final word when a continuing 'holdover' director is not re-elected." Currently, the directors are elected by a majority of the votes cast in an uncontested election (assuming a quorum is present). The Proponent's analysis is incorrect because, in order for a shareholder vote to be the "final word" in removing a director, Section 141(k) of the DGCL requires a majority of the outstanding shares then entitled to vote at an election of directors to vote in favor of the director's removal (i.e. greater than 50% of the outstanding shares would need to vote in favor of removal), not the lower threshold that the Proposal contemplates which would allow for the automatic removal of a director when a majority of the outstanding shares did not vote in favor of the director's removal, since the director failed to receive a majority of the votes cast on their re-election proposal. The ability of shareholders to remove directors is

carefully circumscribed in Section 141(k) and the Proposal would, in effect, constitute an impermissible removal of a director prior to their successor being "elected and qualified" under circumstances not provided for in Section 141(k). Put differently, if adopted as proposed, the Proposal would provide for automatic termination of the director's services solely on whether the director fails to receive a majority of the votes cast at the meeting, which is a lower standard than the majority of the shares entitled to vote at the meeting standard required under Section 141(k) of the DGCL.

Moreover, Section 141(b) of the DGCL states that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." The Proposal requires that an incumbent director who fails to receive the affirmative vote of the majority of votes cast at the next annual meeting of shareholders be removed from the Board immediately. That result, as it relates to incumbent directors, is directly contrary to the DGCL because there is no action the Company, or the Board, could lawfully take to effect immediate removal of a director under Delaware law.

Section 141(b) of the DGCL provides that a "resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable." However, though the DGCL allows a director to voluntarily tender an irrevocable resignation, it does not allow for such a resignation to override the Board's authority to reject that resignation by purporting to be automatically effective in certain scenarios. A binding requirement that a director offer an automatically accepted resignation is simply director removal by another name. Delaware law provides that directors cannot be removed unless at least a majority of the outstanding stock is voted for such removal. A bylaw amendment, such as the one the Proposal requests, that requires forced resignation would run afoul of the orderly operation of director removals under the DGCL. Further, the ability of shareholders to remove directors is carefully circumscribed in Section 141(k) and the Proposal would, in effect, constitute an impermissible removal of a director prior to their successor being "elected and qualified" under circumstances not provided for in Section 141(k). A bylaw cannot be inconsistent with or override a statutory mandate. See 8 Del. C. § 109(b); *Kerbs v. California Eastern Airways*, 90 A.2d 652, 658-59 (Del. 1952) (bylaw purporting to allow establishment of a quorum with fewer directors than the minimum required by statute declared void, holding that "a by-law which is repugnant to the statute must always give way to the statute's superior authority"); see also *Sinchareonkul v. Fahnemann*, 2015 WL 292314, at * 8 (Del. Ch. Jan. 22, 2015). The Delaware courts have held that a bylaw that purports to permit the shareholders to remove directors by a vote threshold lesser than what is required by Section 141(k) is "[unambiguously] inconsistent with the statute" and therefore invalid and unenforceable. *Frechter v. Zier*, 2017 WL 345142, at *4 (Del Ch. Jan. 24, 2017). 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, the Proposal would force a resignation for which there is no authority in the DGCL.

Furthermore, the Proposal is properly excludable despite the fact that it uses precatory language in that the Proposal "requests" the Board "take the necessary action" to implement certain actions because implementing the Proposal would violate Delaware law. The Staff has repeatedly permitted exclusion of

precatory or advisory shareholder proposals and proposals using similar phrasing to "take the necessary action" pursuant to Rule l 4a-8(i)(2) if the action called for in the proposal would violate state, federal or foreign law. *See*, *e.g.*, *Merck & Co., Inc.* (Jan. 29, 2010) (permitting the exclusion of a proposal under Rule 14a-8(i)(2), requesting that the company's board "undertake the steps as may be necessary" to permit shareholder action by written consent); *Ball Corp.* (Jan. 25, 2010) (concurring with the company's request to exclude a precatory board declassification proposal under Rules 14a-8(i)(2) and (i)(6)); *AT&T, Inc.* (Feb. 19, 2008) (concurring with the company's request to exclude a precatory proposal regarding shareholder action by written consent under Rules 14a-8(i)(2) and (i)(6)); *MeadWestvaco Corp.* (Feb. 27, 2005) (concurring with the company's request to exclude a precatory proposal requesting the company adopt per capita voting under Rule 14a-8(i)(2)); and *Hewlett Packard Co.* (Jan. 5, 2005) (concurring with the company's request to exclude a precatory proposal regarding shareholder approval of certain executive compensation payments under Rule 14a-8(i)(2)).

For these reasons and those set forth in the Delaware Law Opinion, and consistent with previous positions of the Staff, the Company respectfully submits that the Proposal can be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(2).

III. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(i)(6) OF THE EXCHANGE ACT BECAUSE THE COMPANY LACKS THE POWER AND AUTHORITY TO IMPLEMENT THE PROPOSAL.

A. Rule 14a-8(i)(6) Background

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal "[i]f the company would lack the power or authority to implement the proposal." This exclusion applies to the Proposal, given the Company lacks the authority to implement any proposal that would violate the DGCL. The Staff has concurred on numerous occasions that a company may exclude a proposal pursuant to both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) if the proposal's adoption would cause the company to violate state law. *See, e.g.*, *RTI Biologics, Inc.* (Feb. 6, 2012) (concurring with the company's request to exclude a proposal that would force early terminations of directors in violation of Delaware law); *NiSource Inc.* (Mar. 22, 2010) (concurring with the company's request to exclude a proposal that would require the company to impose restrictions on transferability of shares already issued, in violation of Delaware law); *Ball Corp.* (Jan. 25, 2010) (concurring with the company's request to exclude a proposal that would require the company to de-stagger its board in violation of Indiana law); *Schering-Plough Corp.* (Mar. 27, 2008) (concurring with the company's request to exclude a proposal that would require the company to adopt cumulative voting in violation of New Jersey law), *Noble Corp.* (Jan. 19, 2007) (concurring with the company's request to exclude a proposal that would require the company to violate Cayman Islands law); *SBC Communications Inc.* (Jan. 11, 2004) (concurring with the company's request to exclude a proposal that would require the company to breach state law by removing directors from a classified board without cause); and *Xerox Corp.* (Feb. 23, 2004) (concurring with the company's request to exclude a proposal that would require the company to give shareholders the right to call special meetings and act by written consent, in violation of New York law).

B. The Company lacks the power or authority under the DGCL to implement the Proposal.

The Company, as a Delaware corporation, "possess[es] and may exercise all the powers and privileges granted by [the DGCL] or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation." 8 *Del. C.* § 121. The Company does not have the requisite corporate power to perform the Proposal because the Proposal conflicts with Delaware law. As discussed more fully above and in the Delaware Law Opinion, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal requests the Board to take actions and implement amendments to its Bylaws that exceed the Board's authority under Delaware law. There is no action the Board can lawfully take to amend the Company's Bylaws to implement the Proposal, and any such action would be void and *ultra vires*. The Company cannot implement the Proposal by means of a Bylaw amendment that, by its very nature, would contravene the DGCL. Therefore, the Company lacks the power or authority under the DGCL to implement the Proposal.

For these reasons, and consistent with published positions of the Staff, the Company respectfully submits that the Proposal can be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(6).

IV. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(i)(3) OF THE EXCHANGE ACT BECAUSE THE PROPOSAL IS MATERIALLY FALSE AND MISLEADING

A. Rule 14aA-8(i)(3) Background

Rule 14a-8(i)(3) allows a company to exclude a shareholder proposal if the "proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has consistently taken the position that vague and indefinite proposals are inherently misleading and, therefore, excludable pursuant to Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Section B.4. of Staff Legal Bulletin 14B (Sept. 15, 2004). The courts have also ruled that "shareholders are entitled to know precisely the breadth of the proposal on which they are asked to vote" and that a proposal should be excluded when "it [would be] impossible for the board of directors or the stockholders at large to comprehend precisely what the proposal would entail." *New York City Employees' Retirement System v. Brunswick Corp.*, 789 F. Supp. 144, 146 (S.D.N.Y. 1992); *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961). The Staff has further explained that a shareholder proposal can be sufficiently misleading and therefore excludable under Rule 14a-8(i)(3) when the company and its shareholders might interpret the proposal differently such that "any action ultimately taken by the [c]ompany upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *Fuqua Industries, Inc.* (Mar. 12, 1991).

The Staff has repeatedly concurred with the exclusion of shareholder proposals with vague terms or ambiguous references where shareholders would not know with any certainty the matters on which they are asked to vote. When key terms in a proposal are vague or undefined, a company and shareholders may have diverging interpretations of these terms.

The Staff has permitted companies to exclude proposals seeking that the board of directors "shall make a determination as to whether there is a compelling justification for . . . any action whose primary purpose is to prevent the effectiveness of shareholder vote." *Walgreens Boots Alliance, Inc.* (Oct. 7, 2016); *Cisco Systems, Inc.* (Oct. 7, 2016); *Microsoft Corp.* (Oct. 7, 2016). In these cases, the proponent failed to define or explain what such a "compelling justification" could or should include.

Further, the Staff permitted a company to exclude, as vague and indefinite, a proposal that sought to "improve [the] guiding principles of executive compensation," noting that "[t]he proposal lacked sufficient description about the changes, actions or ideas for the company and its shareholders to consider that would potentially improve such guiding principles." *See Apple Inc.* (Dec. 6, 2019). Similarly, in permitting an exclusion of a proposal to "reform" executive compensation, the Staff noted that "neither shareholders nor the company would be able to determine with any reasonable certainty the nature of the 'reform' the proposal was requesting," and therefore, the proposal, "taken as a whole, is so vague and indefinite that it is rendered materially misleading." *Ebay, Inc.* (Apr. 10, 2019). Notably, the Staff has permitted the exclusion of proposals purporting to address financial matters that provided no guidance or direction regarding the implementation of the proposals. *See Morgan Stanley* (Mar. 12, 2013) (permitting, on grounds of vagueness, the exclusion of a proposal requesting "an extraordinary transaction resulting in the separation of one or more businesses"); *Bank of America Corp.* (Mar. 12, 2013) (permitting, on grounds of vagueness, the exclusion of a proposal requesting the formation of a committee to explore "extraordinary transactions that could enhance stockholder value"); *Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting the exclusion, on grounds of vagueness, of a proposal, noting that such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations); and *Exxon Corp.* (Jan. 29, 1992) (permitting the exclusion, on grounds of vagueness, of a proposal noting that such terms as "bankruptcy" and "considerable amount of money" would be subject to differing interpretations).

Just like the proposals in these no-action letters, there are many different potential interpretations of what the Proposal requires. As a result, if approved, the Company could implement the Proposal in a way that is materially different from what shareholders anticipate when they vote on it.

B. The Proposal is Materially False and Misleading.

The Proposal fails to explain what actions or measures it would require. Moreover, the Proposal also fails to define certain key terms. If a proposal provides standards or criteria that a company is intended to follow, the proposal and supporting statement must provide reasonable certainty to both the company and its shareholders with regard to the meaning and operation of those standards and criteria; the proposal and supporting statement cannot provide guidance that is uncertain, vague, or overly general. As discussed above, the Staff has consistently concurred that specific standards that are integral to a proposal must be sufficiently explained in the proposal or supporting statement and, as such, when a proposal fails to adequately define key terms or provide sufficient guidance regarding the manner in which the proposal should be implemented, that proposal may be omitted as vague and indefinite. *Walgreens Boots Alliance, Inc.* (Oct. 7, 2016); *Cisco Systems, Inc.* (Oct. 7, 2016); *Microsoft Corp.* (Oct. 7, 2016).

The Proposal would "require the Board to accept a tendered resignation absent the **finding** of a **compelling reason** or reasons to not accept the resignation" (emphasis added). The terms "finding" and "compelling reason" are key terms in the Proposal because they constitute the standard procedure that the Company and the Board would be required to follow, and thus the Proposal must provide reasonable certainty to the Company and its shareholders as to their meaning and operation. However, similar to the proponent's failure to define a "compelling justification" in the proposals at issue in *Walgreens*, *Cisco*, and *Microsoft*, the Proponents here fail to define or explain the meaning of a "compelling reason" or a "finding."

The supporting statement claims that the Proposal would "set a more demanding standard of review for addressing director resignations then that contained in the Company's current resignation bylaw." However, the Proposal and supporting statement fail to provide any definition, information, or guidance on what would constitute a "compelling reason" for the rejection of a "holdover" director's resignation. As discussed in Section V of this letter, the Company's current governance policies and procedures already require that the Board determine that director nominees possess a full list of enumerated characteristics that demonstrate they are well-qualified to serve on the Board. However, neither the Proposal nor the supporting statement explain whether, or how, this "compelling reason" standard differs from the Company's current policies and procedures. There is no information, definition, or example in the Proposal or supporting statement describing what could potentially constitute a "compelling reason."

There are innumerable ways in which shareholders could interpret what a "compelling reason" standard would entail. Further, the Proposal fails to describe or explain the process or determinant for such a "finding." Below are a few questions illustrating how different shareholders could envision various and divergent standards the Proposal might contemplate:

- Does the Proposal seek to remove, replace, or supplement the current enumerated evaluation criteria for all director nominees? As discussed above and more fully in Section V of this letter, the Board would already be required to have determined that upon their nomination for re-election, any "holdover" director possessed a full list of enumerated characteristics that demonstrate they are well-qualified and well-situated to serve on the Board. Would any or all of these criteria constitute a "compelling reason" for their continued service on the Board?

- What is a "compelling reason"? There is a virtually infinite range of possible criteria that could constitute a "compelling reason," and the Proponents provide no definition, no guidance, and no example in the Proposal or the supporting statement of what such a standard could or should include.

- To whom or what must any "compelling reason" relate? Must the reason be related to the individual "holdover" director's specific qualifications, performance, or personal characteristics? Could a "compelling reason" also include strategic considerations related to the Company as a whole, rather than the individual director?

- Who is responsible for the ultimate determination of such a "finding"? According to the supporting statement, the Proposal would require "the reviewing directors to articulate a compelling reason" but nowhere does it state whether simply articulating a reason is sufficient to constitute a "finding of a compelling reason or reasons to not accept the resignation," or whether such a finding must be established by some other method or responsible party. At a minimum, the parties responsible for this determination could conceivably include the full Board, the full Board excluding the "holdover" director, only the independent directors of the Board, the Corporate Governance Committee, management, shareholders, the courts, or any number of other stakeholders.

- Must a "finding" be unanimously agreed upon by whoever the abovementioned responsible individuals are, or would a majority decision or some other standard be applicable here?

Accordingly, the terms "finding" and "compelling reason" are unclear, undefined by the Proposal, and without an ordinary, commonly understood meaning in the context of the Proposal. While each of the words comprising these terms has an ordinary meaning in isolation, put together, these terms and the lack of any defining or explanatory language in the Proposal and supporting statement are likely to cause confusion as to what standard is meant by a "compelling reason," who would be responsible for making such a "finding," and what the parameters would be for doing so. Ultimately, the Proposal's failure to define or explain these core terms renders the Company and shareholders unable to understand or determine with any reasonable certainty exactly what actions or measures the Proposal requires or what changes to the Company's current governance policies and procedures could be undertaken if the Proposal were to be voted on.

For these reasons, and consistent with published positions of the Staff, the Company respectfully submits that the Proposal can be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(3).

V. THE PROPOSAL MAY BE EXCLUDED UNDER RULE 14A-8(i)(10) OF THE EXCHANGE ACT BECAUSE THE COMPANY HAS ALREADY SUBSTANTIALLY IMPLEMENTED THE PROPOSAL.

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already "substantially implemented" the proposal. The Commission adopted the "substantially implemented" standard after determining that the "previous formalistic application" of the rule defeated its purpose, which is "to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." *See Exchange Act Release No. 34-20091* (Aug. 16, 1983) (the "***1983 Release***"*); Exchange Act Release No. 34-12598* (July 7, 1976). Accordingly, the actions requested by a proposal need not be "fully effected" if they have been "substantially implemented" by the company. *See* the 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a shareholder proposal under Rule 14a-8(i)(10) when it has determined that the company's policies, practices and procedures compare favorably with the guidelines of the proposal. *See, e.g.*, *Exxon Mobil Corp.* (Mar. 23, 2018) (permitting the exclusion of a proposal requesting that the company issue a report "describing how the company could adapt its business model to align with a decarbonizing economy by altering its energy mix to substantially reduce dependence on fossil fuels" where the company had previously issued a report providing examples of how the company was adapting its business model to reduce societal greenhouse gas emissions); *Lowe's Companies, Inc.* (*granted on recon.,* Mar. 24, 2017) (permitting the exclusion of a proposal requesting that the board of directors take the steps necessary to allow up to 50 shareholders to aggregate their shares to satisfy the proxy access threshold where the company amended its bylaws to provide a procedure enabling up to 20 shareholders to nominate and include in the company's annual proxy materials director nominees constituting the greater of (i) two or (ii) 20% of the board of directors); *Exxon Mobil Corp.* (Mar. 17, 2015) (permitting the exclusion of a proposal requesting that the company commit to increasing the dollar amount authorized for capital distributions to shareholders through dividends or share buybacks where the company's long-standing capital allocation strategy and related "policies practices and procedures compare[d] favorably with the guidelines of the proposal and…therefore, substantially implemented the proposal"). *See also, e.g.*, *IDACORP, Inc.* (Apr. 1, 2022); *Edison Int'l* (Feb. 23, 2022); *JPMorgan Chase & Co.* (Feb. 5, 2020); *The Allstate Corp.* (Mar. 15, 2019); *Johnson & Johnson* (Feb. 6, 2019); *United Cont'l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Res., Inc.* (Feb. 9, 2016); *Ryder Sys., Inc.* (Feb. 11, 2015).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company has already addressed the underlying concerns and satisfied the essential objective of the proposal. *See, e.g.*, *The Wendy's Co.* (Apr. 10, 2019) (permitting the exclusion of a proposal under Rule 14a-8(i)(10) requesting a report assessing human rights risks of the company's operations, including the principles and methodology used to make the assessment, the frequency of assessment and how the company would use the assessment's results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *AGL Res. Inc.* (*granted on recon.*, Mar. 5, 2015) (permitting exclusion of a proposal seeking to grant holders of 25% of the company's outstanding shares the power to call a special meeting where the board approved, and undertook to submit for shareholder approval, an amendment to the articles of incorporation to grant shareholders holding for at least one year 25% of the outstanding shares the power to call a special meeting); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting the exclusion of a proposal under Rule 14a-8(i)(10) requesting a report on the company's sustainability policies and performance, including multiple objective statistical indicators, where the company published an annual sustainability report); *Textron, Inc.* (Jan. 21, 2010) (permitting exclusion of a proposal requesting immediate board declassification where the board submitted a phased-in declassification proposal for shareholder approval); *see also, e.g., Eli Lilly and Co.* (Jan. 8, 2018); *Korn/Ferry Int'l* (July 6, 2017); N*ETGEAR, Inc.* (Mar. 31, 2015); *Pfizer, Inc.* (*granted on recon.,* Mar. 1, 2013).

The Staff has also repeatedly permitted exclusion under Rule 14a-8(i)(10) of proposals requesting implementation of a majority voting standard for uncontested director elections where the company had already amended or agreed to amend its bylaws to implement such standards. *See, e.g., Alphabet Inc.* (Apr. 16, 2021); *AECOM* (Dec. 21, 2018); *Kellogg Co.* (Dec. 27, 2017); *Genomic Health, Inc.* (Mar. 13, 2015);

3D Sys. Corp. (Jan. 21, 2015); *Edison Int'l* (Dec. 23, 2010); *Symantec Corp.* (June 3, 2010); *The Dow Chemical Co.* (Mar. 3, 2008); *American Ins. Grp., Inc.* (Mar. 12, 2008); *Citigroup Inc.* (Mar. 8, 2007); *AT&T Inc.* (Jan. 18, 2007) (each permitting the exclusion of a proposal under Rule 14a-8(i)(10) where the company had already amended or agreed to amend its bylaws to provide for a majority voting standard in uncontested director elections).

Additionally, the Staff has consistently permitted exclusion under Rule 14a-8(i)(10) where a company has implemented a majority voting standard for uncontested director elections in its bylaws and has adopted a majority voting or director resignation policy to address the treatment of a "holdover" director, including where the resignation process does not align precisely with the process contained in the proposal. For example, in *AECOM* (Dec. 21, 2018), the company adopted a majority voting bylaw amendment and amended its corporate governance guidelines to implement a resignation policy providing that when any director fails to be re-elected by the majority of votes cast they would be expected to tender a resignation and that the board would act on the resignation within 90 days following the election. Although the proposal requested that "holdover" directors resign immediately, the Staff nonetheless permitted exclusion under Rule 14a-8(i)(10) and noted that "the [c]ompany's bylaws compare favorably with the guidelines of the [p]roposal and that the [c]ompany has, therefore, substantially implemented the [p]roposal." *See also, e.g., Kellogg Co.* (Dec. 27, 2017); *Genomic Health, Inc.* (Mar. 13, 2015); *American Ins. Grp., Inc.* (Mar. 12, 2008).

B. The Company has substantially implemented the Proposal.

The Proposal includes three main requirements:

1. The Proposal requires the Board to accept a tendered resignation of a "holdover" director absent the finding of a compelling reason or reasons to not accept such resignation.

2. The Proposal requires that the Board report the reasons for its actions in a Current Report on Form 8-K filed with the Commission.

3. The Proposal requires that if a "holdover" director is not re-elected at the following annual election of directors, such director's resignation will be automatically effective 30 days after the certification of the election vote.

With respect to the first requirement that there be a "compelling reason" for the Board to reject a "holdover" director's resignation, the Company's Bylaws; the Charter of the Company's Corporate Governance and Policy Committee; and the Company's policies, practices and procedures, including the Corporate Governance Guidelines (the "***Governance Guidelines***"), already satisfy the essential objective of the Proposal and in fact require a higher standard of review of the "holdover" director's qualifications than the so-called "compelling reason" standard in the Proposal.

Section 3.04(b)(1) of the Bylaws provides as follows:

> If an incumbent director who is standing for re-election does not receive a majority of the votes cast, the committee of the board authorized to nominate candidates for election to the

> board will make a recommendation to the board on whether to accept the director's resignation, and on whether other action should be taken. The director will not participate in the committee's recommendation or the board's decision. The independent members of the board will consider the committee's recommendation and publicly disclose the board's decision and the basis for that decision within ninety (90) days from the date of the certification of the final election results.

The Corporate Governance and Policy Committee of the Company, which is mandatorily comprised entirely of independent directors, must conduct an assessment, and make the abovementioned recommendation to the Board. The parameters for the Corporate Governance and Policy Committee's evaluation of director candidates are contained in the Governance Guidelines, which strictly and expressly require that all directors and candidates *must* possess certain enumerated qualities, including "exemplary ethics and integrity," "proven judgment and competence," "professional skills and experience that align with the needs of the Corporation's long-term business strategy and complement the experience represented on the Board," "the ability to act independently and be willing to represent the long-term interests of all shareholders and not just those of a particular constituency or perspective," and being "willing and able to devote sufficient time to fulfill responsibilities to Verizon and its shareholders."

Absent any specific definition for a "compelling reason" in the Proposal, any one of these characteristics individually could constitute a compelling reason for the Board to reject the resignation of a "holdover" director. Thus, since the decision to nominate the "holdover" director for re-election would already have inherently required a determination by the all-independent members of the Corporate Governance and Policy Committee that all five of these "compelling reasons" existed, the Company's current policies and practices can be understood to require a higher standard of review than the requirements of the Proposal. Therefore, the requirements of Section 3.04(b)(1) of the Bylaws compare favorably to those of the Proposal, thus accomplishing the Proposal's primary objective of fostering a meaningful evaluation of the reasons whether to accept or reject a "holdover" director's resignation.

With respect to the second requirement of the Proposal which states that the Board must report the reasons for its actions in a Current Report on Form 8-K filed with the Commission, the Company's current practices, policies and procedures compare favorably with the Proposal by satisfying the essential objective of the Proposal and going a step further by requiring that the public disclosure be made within 90 days of the certification of election. Under Section 3.04(b)(1) of the Bylaws, the independent members of the Board "will consider the committee's recommendation and publicly disclose the board's decision and the basis for that decision within ninety (90) days from the date of the certification of the final election results." Thus, the Company's Bylaws already require public disclosure of the Board's decision and its basis therefor, in addition to the Bylaws' existing requirement that the Board must do so within a prescribed time frame.

With respect to the third requirement in the Proposal that if a "holdover" director is not re-elected at the following annual election of directors, such director's resignation will be automatically effective 30 days after the certification of the election vote, the Company cannot implement this exact requirement without violating Delaware law, as discussed in Section II above and in the Delaware Law Opinion. However, the Company has already implemented the strict measures that satisfy the essential objective of the Proposal by adopting a robust director resignation framework that employs even stricter requirements

of the Board than the Proposal does in several respects, while remaining within the confines of Delaware law.

For these reasons, and consistent with published positions of the Staff, the Company respectfully submits that the Proposal can be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(10).

CONCLUSION

For the foregoing reasons, the Company believes that the Proposal may be omitted from the 2024 Proxy Materials and respectfully requests that the Staff confirm that it will not recommend any enforcement action if the Proposal is excluded.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If you have any questions or need additional information, please do not hesitate to contact me at sanjay.shirodkar@us.dlapiper.com or (202) 799-4184.

Sincerely,

Sanjay Shirodkar

Sanjay M. Shirodkar

Enclosures

cc: Brandon N. Egren, Verizon Communications Inc.
Michael Piccirillo, New York City Carpenters Pension Fund
John Reed, DLA Piper LLP (US)

EXHIBIT A

Proposal

United Brotherhood of Carpenters and Joiners of America
NEW YORK CITY & VICINITY DISTRICT COUNCIL OF CARPENTERS

JOSEPH A. GEIGER
Executive Secretary - Treasurer

PAUL CAPURSO
President / Asst EST

DAVID CARABALLOSO
Vice President / Asst EST

395 HUDSON STREET - 9TH FLOOR
NEW YORK, N Y 10014
PHONE (212) 366-7500
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SENT VIA OVERNIGHT UPS

November 20, 2023

Assistant Corporate Secretary
Verizon Communications Inc.
1095 Avenue of the Americas
New York, NY 10036

Dear Assistant Corporate Secretary:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the New York City Carpenters Pension Fund ("Fund"), for inclusion in the Verizon Communications, 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, BNY Mellon, 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 Michael Piccirillo at Mpiccirillo@nycdistrictcouncil.org Mr. Piccirillo will be available to discuss the proposal on Tuesday, December 12, or Tuesday, December 19, 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. Piccirillo, New York City District Council of Carpenters, 395 Hudson Street, 9th Floor, New York, NY 10014 or at the email address above.

Sincerely,

Joseph A. Geiger

Joseph A. Geiger
Fund Co-Chair - Trustee

cc. Michael Piccirillo
Edward J. Durkin
Enclosure

Director Election Resignation Bylaw Proposal:

Resolved: That the shareholders of Verizon Communications, 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

Opinion of Counsel

DLA Piper LLP (US)
1201 North Market Street, Suite 2100
Wilmington, DE 19801-1147
www.dlapiper.com

January 4, 2024

Verizon Communications Inc. (the "Addressee")
One Verizon Way
Mail Code VC54S
Basking Ridge, New Jersey 07920

Re: Shareholder Proposal on behalf of the New York City Carpenters Pension Fund

Addressee:

We have been asked to render limited opinions relating to Verizon Communications Inc., a Delaware corporation (the "***Company***"), in connection with the following shareholder proposal (the "***Proposal***") received from the New York City Carpenters Pension Fund (the "***Fund***"), with the United Brotherhood of Carpenters and Joiners of America authorized to act on the Fund's behalf (the Fund and the United Brotherhood of Carpenters and Joiners of America are referred to collectively as the "***Proponents***"), dated November 20, 2023, for the 2024 annual meeting of shareholders of the Company (the "***Annual Meeting***"):

> **Resolved:** That the shareholders of Verizon Communications, 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.

In connection with the Proposal, the Addressee has requested the issuance of an opinion letter as to whether a state court of Delaware of competent jurisdiction exercising jurisdiction over the Company and the Proposal (a "***Delaware Court***"), utilizing reasonable judgment after full consideration of all relevant factors, should conclude pursuant to Applicable Law (as defined herein) that: (1) the Proposal is not proper business which may be transacted at the annual meeting of the shareholders of the Company; (2) the Company does not have the requisite corporate power to perform the Proposal; and (3) the Proposal, if authorized by the Company's shareholders, would conflict with Applicable Law.

For purposes of giving the opinions hereinafter set forth, we have examined:

1. The Restated Certificate of Incorporation of the Company, as filed with the Office of the Secretary of State of the State of Delaware on May 8, 2014 (the "***Certificate of Incorporation***");

2. The Amended and Restated Bylaws of the Company, amended as of September 30, 2022 (the "***Bylaws***"); and

3. The Proposal.

The Proponents seek to have the Board amend two sections of the Bylaws. The first is Section 3.04(b)(1), which provides:

> (1) **Election of Directors**. At a meeting for the election of directors, each director shall be elected by a majority of the votes cast with respect to that director; provided that, if the number of nominees exceeds the number of directorships to be filled, the directors shall be elected by a plurality of the votes cast. For purposes of this paragraph, a majority of the votes cast means that the number of shares voted "for" must exceed the number of shares voted "against" with respect to that director's election. If a nominee for director who is not an incumbent director does not receive a majority of the votes cast, the nominee shall not be elected. If an incumbent director who is standing for re-election does not receive a majority of the votes cast, the committee of the board authorized to nominate candidates for election to the board will make a recommendation to the board on whether to accept the director's resignation, and on whether other action should be taken. The director will not participate in the committee's recommendation or the board's decision. The independent members of the board will consider the committee's recommendation and publicly disclose the board's decision and the basis for that decision within ninety (90) days from the date of the certification of the final election results. If less than two members of the committee are elected at a meeting for

> the election of directors, the independent members of the Board who were elected shall consider and act upon the tendered resignation. If for any reason none of the nominees is elected at a meeting for the election of directors, the incumbent directors shall call a special meeting of the stockholders as soon thereafter as convenient for the purpose of electing a board of directors.

The second is Section 4.05(c), which provides:

> (c) Each director who consents to stand for re-election shall tender an irrevocable resignation in advance of the meeting for the election of directors. Such resignation will be effective if, pursuant to Section 3.04(b)(1) of these Bylaws, (i) the director does not receive the required vote at the next meeting for the election of directors, and (ii) the Board accepts the resignation.

For purposes of this opinion letter, we have not reviewed any documents other than the documents listed in (1) through (3) above. We have assumed that there exists no provision in any document that we have not reviewed that is inconsistent with or that would otherwise alter the opinions stated herein.

In addition, we have conducted no independent factual investigation of our own but rather have relied solely on the foregoing documents, which we have assumed to be true, complete and accurate.

All of the opinions contained herein are subject to the following assumptions, qualifications, limitations and exceptions:

a. We express no opinion as to the laws of any state or jurisdiction other than the General Corporation Law of the State of Delaware, which, in the case of such law, in the experience of our attorneys who are members of the bar in Delaware in the exercise of customary professional diligence, are normally applicable to matters of the type provided for in the Proposal, and excluding any laws, rules or regulations governing or otherwise regulating entities that engage in any particular business in any particular location, but without our having made any special investigation concerning any other law, rule or regulation, in each case in effect on the date hereof (the law referred to in this sentence, but specifically excluding all other laws, rules, regulations and matters, the "***Applicable Law***").

b. We have assumed that all signatures on documents examined by us are genuine, that all documents submitted to us as originals are authentic and that all documents submitted to us as copies conform with the originals. We have assumed that any signature via DocuSign or other electronic technology on documents reviewed by us is duly authorized, authentic and can be directly traceable to the signatory.

c. We have assumed that the Certificate of Incorporation and the Bylaws are the only constituent documents of the Company and that no other documents having validity as a matter of corporate law exist that relate to the management, operation, dissolution, winding up and termination of the Company.

d. This opinion letter is limited to the present Applicable Law and the facts as they currently exist. The opinions rendered herein speak only as of the date of this letter, and we undertake no duty to advise you as to any change in law or change in fact occurring after the delivery of this letter that could affect any of the opinions rendered herein.

e. The opinions expressed herein are not a guaranty as to what any Delaware Court would actually hold, but an opinion as to the decision a Delaware Court should reach if the issues are properly presented to it and the Delaware Court follows existing precedent as to Applicable Law, common law and equitable principles. The recipients of this opinion letter should take these limitations into account in analyzing the opinions set forth herein.

f. The opinions expressed in this opinion letter are limited to the matters set forth in this opinion letter, and no other opinion should be inferred beyond the matters expressly stated.

Based upon the foregoing, and upon an examination of such questions of Applicable Law as we have considered necessary or appropriate, and subject to the assumptions, qualifications, limitations, and exceptions set forth herein, and based on our analysis set forth herein, we are of the opinion that:

1. The Proposal is not proper business which may be transacted at the annual meeting of the shareholders of the Company.

2. The Company does not have the requisite corporate power to perform the Proposal.

3. The Proposal, if authorized by the Company's shareholders, would conflict with Applicable Law.

Our analysis supporting the opinions contained herein follows.

I. ***The Proposal Is Not Proper Business Which May Be Transacted At The Annual Meeting Of The Shareholders Of The Company*.**

Section 211(b) of the General Corporation Law of the State of Delaware (the "***DGCL***") empowers the transaction of "proper business" at each annual meeting of shareholders. 8 *Del. C.* § 211(b). The Proposal does not constitute "proper business" because it conflicts with Applicable Law, as explained in Section III, *infra*.

II. ***The Company Does Not Have The Requisite Corporate Power To Perform The Proposal*.**

The Company, as a Delaware corporation, "possess[es] and may exercise all the powers and privileges granted by [the DGCL] or by any other law or by its certificate of incorporation, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business or purposes set forth in its certificate of incorporation." 8 *Del. C.* § 121. The Company does not have the requisite corporate power to perform the Proposal because it conflicts with Applicable Law, as explained in Section III, *infra*.

III. ***The Proposal, If Authorized By The Company's Shareholders, Would Conflict With Applicable Law*.**

A. Implementation of the Proposal would cause the Company to violate the DGCL because the requirements of the Proposal would supersede the discretion of the Board and infringe upon its managerial authority under the DGCL.

In reaching this opinion, we start from the proposition that Section 141(a) of the DGCL contains the following language expressly clarifying as a statutory matter that the directors' managerial authority may be delimited only by a certificate of incorporation approved by the shareholders:

> 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**. If any such provision is made in the certificate of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the certificate of incorporation.

8 *Del. C.* § 141(a) (emphasis added). There is no such provision in the Company's Certificate of Incorporation and Section 4.01 of the Company's Bylaws follows the mandate of the DGCL by stating that "[a]ll powers vested by law in the corporation shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the board of directors." Even if modified, Delaware certificates of incorporation may only

contain provisions governing the business and affairs of the corporation that are not "contrary to the laws" of Delaware, including the DGCL, and do not "achieve a result forbidden by …public policy." *Sterling v. Mayflower Hotel Corp.*, 93 A.2d 107, 108 (Del. 1952); *Jones Apparel Grp., Inc. v. Maxwell Shoe Co.*, 883 A.2d 827, 847 (Del. Ch. 2004).

Section 141(a) of the DGCL establishes the "bedrock statutory principle of director primacy," and even controlling shareholders cannot usurp the authority of the board of directors they elect. *Fox v. CDX Holdings, Inc.*, 2015 WL 4571398, at *24 (Del. Ch. July 28, 2015), *aff'd*, 141 A.3d 1037 (Del. 2016). As the Delaware Supreme Court has long held: "A cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation." *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984). That "stockholders must live with the informed …and good faith …business decisions of the directors unless the DGCL requires a [stockholder] vote…. [i]s a central premise of [Delaware] law, which vests most managerial power over the corporation in the board and not in the stockholders." *Hollinger Inc. v. Hollinger Int'l, Inc.*, 858 A.2d 342, 387 (Del. Ch. 2004). In short, "[t]he board may not either formally or effectively abdicate its statutory power and its fiduciary duty to manage or direct the managing of the business and affairs of the corporation." *In re. Pattern Energy Grp. Inc. S'holders Litig.*, 2021 WL 1812674, at *59 (Del. Ch. May 6, 2021) (quoting *Grimes v. Donald*, 1995 WL 54441, at *9 (Del. Ch. Jan. 11, 1995), *aff'd*, 673 A.2d 1207 (Del. 1996)).

Delaware courts do distinguish between abdication/usurpation of management authority versus restrictions on board authority. *See, e.g.*, *Sample v. Morgan*, 914 A.2d 647, 671-73 & n.77 (Del. Ch. 2007) (rejecting argument that five-year restriction on new stock issuances in a stock purchase agreement was invalid as a matter of law, while accepting that restrictions could be inequitable and lead to viable breach of fiduciary duty claims under certain circumstances); *Unisuper Ltd. v. News Corp.*, 2005 WL 3529317, at *6 (Del. Ch. Dec. 20, 2005) (upholding shareholders' agreement that granted shareholders an irrevocable veto right over poison pills).

With respect to the requirement in the Proposal that the Board have and state a "compelling reason" for rejecting the conditional resignation of any incumbent director who does not obtain a majority vote in an uncontested election, "it is well-established that stockholders of a corporation subject to the DGCL may not directly manage the business and affairs of the corporation." *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 232 (Del. 2008). The decision to reject or accept a resignation of a director is a business decision to be made by the Board, and that decision requires the Board to exercise its business judgment consistent with its fiduciary duties. *Louisiana Mun. Police Emps. Ret. Sys. v. Morgan Stanley & Co. Inc.*, 2011 WL 773316, at *6 (Del. Ch. Mar. 4, 2011). Such a business decision is multi-faceted and requires the consideration and balancing of many factors, including the tenure and qualifications of the director, the past and expected future contributions of the director, the impact of the director's retention or exclusion on the overall function of the Board and the Company, among other factors. Here, the Proposal seeks to supersede and infringe upon the Board's judgement with respect to its decision whether to reject a director resignation and would preclude a rejection even if the directors determine in the exercise of their good faith business judgment that a resignation is not in the best interests of the Company.

With respect to the requirement in the Proposal that a conditional resignation of any director who does not obtain the required majority vote in two consecutive uncontested elections becomes automatically effective 30 days after the election, it too leaves **no** circumstance in which the Board could exercise its managerial discretion to reject such a resignation, even if the directors determine in the exercise of their good faith business judgment that a resignation is not in the best interests of the Company. This portion of the Proposal cannot be viewed as a restraint on director action rather than an intrusion into managerial decision making because it is not a restriction on an action but is instead an involvement in the decision process for the purpose of determining the outcome of the decision. However, even if viewed as a restraint on director action rather than an intrusion into managerial decision making, in this circumstance it would be invalid because Delaware law does not permit shareholders to deprive directors of the ability to exercise their full managerial power in circumstances where their fiduciary duties would otherwise require them to exercise their judgment. *CA, Inc.*, 953 A.2d at 239.

Further, the DGCL conclusively provides that directors' managerial authority may be delimited only by a certificate of incorporation approved by the shareholders, and the Proposal does not expressly seek the adoption of an amendment to the Company's Certificate of Incorporation. Indeed, the Proposal would require an amendment to the Bylaws which would directly contravene the requirement that any limits to the directors' authority must be provided for in the Certificate of Incorporation. Even if the Proposal could be read to request such an amendment to the Certificate of Incorporation, a provision in the Certificate of Incorporation that purported to allow shareholders to usurp the Board's authority to decide in its good faith business judgment whether to accept or reject a fellow director's resignation would be invalid under Delaware law. Section 102(b)(1) of the DGCL permits a certificate of incorporation to limit the powers of a corporation unless such limitation would violate the laws of Delaware. 8 *Del. C.* § 102(b)(1). Thus, a Delaware certificate of incorporation cannot impose a limitation that violates a Delaware statute or public policy. Because the DGCL clearly mandates that the Board must be afforded the power to manage the business and affairs of the Company, the Board's statutory rights cannot be eliminated by a provision of any amendment to the Certificate of Incorporation. Delaware courts have repeatedly stressed that directors' statutory management authority is a "central premise," a "cardinal precept," and a "bedrock statutory principle" of Delaware law, and the state of Delaware has a strong public policy interest in assuring that directors maintain their statutory management authority. *Fox*, 2015 WL 4571398, at *24; *Aronson*, 473 A.2d at 811; *Hollinger Inc.*, 858 A.2d at 387.

B. Implementation of the Proposal would cause the Company to violate the DGCL because the Proposal would require the Board to violate their fiduciary duties.

For reasons already explained above, the Proposal would limit the directors' exercise of their fiduciary duties by preventing directors from deciding whether, in their good faith business judgment, the acceptance of a "holdover" director's resignation is in the best interests of the Company. Thus, the directors would be forced, as a result of the Proposal, to automatically accept the resignation of a "holdover" director who does not receive a majority of votes upon reelection, even if the rejection of the resignation, as determined by the directors in the exercise of their fiduciary duties, would otherwise be in the best interests of the Company. Essentially, the directors' obligation to abide by their fiduciary duties would be subordinated to the Proposal.

Under Delaware law, the Board cannot adopt an internal governance policy, whether though an amendment to the Bylaws or any other Board action, that prevents the Board in the future from exercising its managerial power and concomitant fiduciary duty in determining whether to accept or reject a fellow director's resignation. Delaware courts have held that a board cannot unilaterally adopt an internal governance provision that limits a future board's ability to take actions they believe will advance the corporation's best interests. *CA, Inc.*, 953 A,2d at 239-40. For example, in *CA, Inc.*, the Delaware Supreme Court held that a proposed shareholder-adopted bylaw that mandated that the board of directors reimburse a shareholder for certain proxy expenses 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 shareholders may not bind future directors on matters involving the management of the company. *Id*.; *see also 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); *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 Proposal requests the adoption of an amendment to the Bylaws that would eliminate the power of current and future directors of the Company to reject a "holdover" director's resignation if they are not re-elected by a majority vote, even in situations where the directors have determined in their good-faith business judgment that such a rejection is in the best interests of the Company. To the extent the Proposal purports to prevent the Board or any future Board from exercising its statutorily granted authority in determining whether to accept or reject a "holdover" director's resignation, the Proposal is inconsistent with Section 141(a) of the DGCL.

C. Implementation of the Proposal would cause the Company to violate the DGCL because the requirement that a conditional resignation becomes automatically effective in certain circumstances is a forced removal of a Board member in contravention of the DGCL.

Section 141(k) of the DGCL states: "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). There are two statutory exceptions to this rule that only apply to corporations with classified boards or cumulative voting, **neither** of which are applicable to the Proposal. Here, in the supporting statement to the Proposal, the Proponents suggest that "the amended bylaw will establish the shareholder vote as the final word when a continuing 'holdover' director is not re-elected." Currently, the directors are elected by a majority of the votes cast in an uncontested election (assuming a quorum is present). The Proponent's analysis is incorrect because, in order for a shareholder vote to be the "final word" in removing a director, Section 141(k) of the DGCL requires **a majority of the outstanding shares then entitled to vote at an election of directors to vote in favor of the director's removal** (i.e. greater than 50% of the outstanding shares would need to vote in favor of removal), not the lower threshold that the Proposal contemplates which would allow for the automatic removal of a director when a majority of the outstanding shares did not vote in favor of the director's removal, since the director failed to receive a majority of the votes cast on their re-election proposal. The ability of shareholders to remove directors is carefully circumscribed in Section 141(k) and the Proposal would, in effect, constitute an impermissible removal of a director prior to their successor being "elected and qualified" under circumstances not provided for in Section 141(k).

Moreover, Section 141(b) of the DGCL states, and the supporting statement of the Proposal even concedes, that "[e]ach director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal." The Proposal requires that an incumbent director who fails to receive the affirmative vote of the majority of votes cast at the next Annual Meeting of shareholders be removed from the Board immediately. That result, as it relates to incumbent directors, is directly contrary to the DGCL because there is no action the Company, or the Board, could lawfully take to effect immediate removal of a director under Delaware law.

Section 141(b) of the DGCL provides that a "resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable." However, though the DGCL allows a director to voluntarily tender an irrevocable resignation, it does not allow for such a resignation to override the Board's authority to reject it by purporting to be automatically effective in certain scenarios. A binding requirement that a director offer an automatically accepted resignation is simply director removal by another name. Delaware law provides that directors cannot be removed unless at least a majority of the outstanding stock is voted for such removal. Bylaws, such as the one described in the Proposal, that require forced resignation run afoul of the orderly operation of the DGCL with respect to director removal. Further, the ability of shareholders to remove directors is carefully circumscribed in Section 141(k) and the Proposal would, in effect, constitute an impermissible removal of a director prior to their successor being "elected and qualified" under circumstances not provided for in Section 141(k).

A bylaw cannot be inconsistent with or override a statutory mandate. *See* 8 *Del. C*. § 109(b); *Kerbs v. California Eastern Airways*, 90 A.2d 652, 658-59 (Del. 1952) (bylaw purporting to allow establishment of a quorum with fewer directors than the minimum required by statute declared void, holding that "a by-law which is repugnant to the statute must always give way to the statute's superior authority"); *see also Sinchareonkul v. Fahnemann,* 2015 WL 292314, at * 8 (Del. Ch. Jan. 22, 2015). The Delaware courts have held that a bylaw that purports to permit the stockholders to remove directors by a vote threshold lesser than what is required by Section 141(k) is "unambiguously[ ] inconsistent with the statute" and therefore invalid and unenforceable. *Frechter v. Zier,* 2017 WL 345142, at *4 (Del Ch. Jan. 24, 2017). 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, the Proposal would force a resignation for which there is no authority in the DGCL.

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This opinion letter is rendered solely for the benefit of the Addressee in connection with the Proposal. We understand that you may furnish a copy of this opinion letter to the Securities and Exchange Commission and the Proponents in connection with the matters addressed herein, and we consent to your doing so. Except as stated in this paragraph, without our prior written consent, this opinion letter may not be furnished, circulated, referred or quoted to, or relied upon or used by, any other person or entity for any purpose.

Very truly yours,

DLA Piper LLP (US)

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

VIA ELECTRONIC SUBMISSION

February 14, 2024

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

Re: *Verizon Communications, Inc.*
Response of the New York City Carpenters Pension Fund to Verizon Communications, Inc. No-Action Request

Ladies and Gentlemen:

On November 21, 2023, the New York City Carpenters Pension Fund (“Fund”) submitted to Verizon Communications, Inc. (“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 4, 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 Verizon Communications, 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.

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

The Fund believes that the various arguments against the Proposal by the Company 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:

I. Rule 14a-8(i)(1) of the Exchange Act because the subject of the Proposal is not a proper subject for action by shareholders under the Delaware General Corporation Law ("DGCL");

II. Rule 14a-8(i)(2) of the Exchange Act because implementation of the Proposal would cause the Company to violate Delaware Law;

III. Rule 14a-8(i)(6) of the Exchange Act because the Company lacks the power and authority to implement the Proposal;

IV. Rule 14a-8(i)(3) of the Exchange Act because the Proposal is materially false and misleading; and

V. Rule 14a-8(i)(10) of the Exchange Act because the Company has already substantially implemented the Proposal.

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 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.

[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.

[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.

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.

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 BYLAW AND THE PROPOSAL

The Company has in place a director resignation bylaw. The bylaw reads as follows:

> SECTION 4.05. **Resignations**.
>
> (a) Any director may resign at any time upon written notice to the chairman of the board, chief executive officer, president or secretary of the corporation. A resignation is effective when delivered unless the resignation specifies a later

[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).

effective date or an effective date determined upon the happening of an event or events.

(b) Each individual nominated for election as a director of the corporation who consents to stand for election shall tender an irrevocable resignation in advance of the meeting for the election of directors. Such resignation shall become effective upon a determination by the board of directors or any committee thereof that (i) the information provided to the corporation by such individual pursuant to Section 4.12 of these Bylaws was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or (ii) such individual, or any stockholder or group of stockholders who nominated such individual, shall have breached any obligations owed to the corporation under these Bylaws.

(c) Each director who consents to stand for re-election shall tender an irrevocable resignation in advance of the meeting for the election of directors. Such resignation will be effective if, pursuant to Section 3.04(b)(1) of these Bylaws, (i) the director does not receive the required vote at the next meeting for the election of directors, and (ii) the Board accepts the resignation.

The Fund's precatory Proposal requests that the Board revise the Company's unilaterally adopted resignation bylaw that empowers the Board to address the legal status of an unelected "holdover" director. Importantly, the Proposal advances a bylaw amendment 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 revised 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 the required majority vote to be elected to the Board. 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 amend 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.

RESPONSE TO THE COMPANY'S RULE 14a-8(i)(1) ARGUMENT

The Company's argues that the Proposal is not a proper subject for action by shareholders under Delaware law because its implementation would require the Company to violate the DGCL in

several ways: (i) the requirements of the Proposal would supersede the discretion of the Board and infringe upon its managerial authority under the DGCL; (ii) implementation of the Proposal would require members of the Board to violate their fiduciary duties; and (iii) the requirement that a conditional resignation becomes automatically effective if a "holdover" director is not re-elected at the next annual election of directors is a forced resignation by a Board member and, in effect, a backdoor removal of a director in contravention of the DGCL.

As we discuss below, the Proposal neither infringes on “managerial authority” nor does it represent a so-called “backdoor removal.” The Proposal is not a violation of the DGCL. Indeed, it embodies the Delaware Supreme Court position that “the stockholder franchise [is] 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).

RESPONSE TO THE COMPANY’S RULE 14a-8(i)(2) ARGUMENT

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. 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. Implementation of the Proposal would cause the Company to violate the DGCL because the requirements of the Proposal would supersede the discretion of the Board and infringe upon its managerial authority under the DGCL;

2. Implementation of the Proposal would cause the Company to violate the DGCL because the Proposal would require members of the Board to violate their fiduciary duties; and

3. Implementation of the Proposal would cause the Company to violate the DGCL because the requirement that a conditional resignation becomes automatically effective in certain circumstances is a forced removal of a Board member in contravention of the DGCL.

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

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 bylaw 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 discussion 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 bylaw 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 bylaw, 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). Such a business decision is multi-faceted and requires the consideration and balancing of many factors, including the tenure and qualifications of the director, the past and expected future contributions of the director, the impact of the director's retention or exclusion on the overall function of the Board and the Company, among other factors. Here, the Proposal seeks to supersede and infringe upon the Board's judgement with respect to its decision whether to reject a director resignation and would preclude a rejection even if the directors determine in the exercise of their good faith business judgment that a resignation is not in the best interests of the Company.

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 "would preclude a rejection even if the directors determine in the exercise of their good faith business judgment that a resignation is not in the best interests of the Company" 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 represents a director "removal" 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.

RESPONSE TO THE COMPANY'S (i)(6) ARGUMENT

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 director resignation bylaw revisions as outlined in the Proposal 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.

RESPONSE TO THE COMPANY'S (i)(3) ARGUMENT

The Company argues that the Proposal and supporting statement fail to provide any definition, information, or guidance on what would constitute a "compelling reason" for the rejection of a "holdover" director's resignation. As noted above, 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 amend 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.

RESPONSE TO THE COMPANY'S RULE (i)(10) ARGUMENT

The Company advances a Rule 14a-8(i)(l0) argument to exclude the Proposal asserting the Company has already "substantially implemented" the Proposal. The Company simply notes the criteria used by its Corporate Governance and Policy Committee to evaluate new Board candidates and asserts these various criteria each represent "compelling reasons" in the context of determining whether to accept a director resignation in the election context. While the Company's

Corporate Governance and Policy Committee's board candidate qualifications may provide for well-qualified nominees, the decision addressed by the Proposal, acceptance or rejection of a director's resignation, follows shareholder rejection of an incumbent director or directors. This resignation decision calls into play a new set of evaluation factors, most importantly that the Company shareholders have rejected the tendering director's candidacy for one or more reasons. The fact that a director is well-qualified to be a Board member by the evaluation criteria employed by the Company's governance committee does not provide the "compelling reason or reasons" for not accepting a director's resignation following an election defeat. The Company has failed to make a substantial implementation argument against the Proposal.

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, 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. Sanjay M. Shirodkar, DLA Piper LLP
Alexandra Gevirtz, Verizon Communications Inc.