WACHTELL, LIPTON, ROSEN & KATZ

MARTIN LIPTON
HERBERT M. WACHTELL
EDWARD D. HERLIHY
DANIEL A. NEFF
STEVEN A. ROSENBLUM
JOHN F. SAVARESE
SCOTT K. CHARLES
JODI J. SCHWARTZ
ADAM O. EMMERICH
RALPH M. LEVENE
RICHARD G. MASON
ROBIN PANOVKA
DAVID A. KATZ
ILENE KNABLE GOTTS
TREVOR S. NORWITZ
ANDREW J. NUSSBAUM
RACHELLE SILVERBERG
STEVEN A. COHEN
DEBORAH L. PAUL
DAVID C. KARP
RICHARD K. KIM
JOSHUA R. CAMMAKER

MARK GORDON
JEANNEMARIE O'BRIEN
WAYNE M. CARLIN
STEPHEN R. DiPRIMA
NICHOLAS G. DEMMO
IGOR KIRMAN
JONATHAN M. MOSES
T. EIKO STANGE
WILLIAM SAVITT
GREGORY E. OSTLING
DAVID B. ANDERS
ADAM J. SHAPIRO
NELSON O. FITTS
JOSHUA M. HOLMES
DAVID E. SHAPIRO
DAMIAN G. DIDDEN
IAN BOCZKO
MATTHEW M. GUEST
DAVID E. KAHAN
DAVID K. LAM
BENJAMIN M. ROTH
JOSHUA A. FELTMAN

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150
TELEPHONE: (212) 403-1000
FACSIMILE: (212) 403-2000

GEORGE A. KATZ (1965-1989)
JAMES H. FOGELSON (1967-1991)
LEONARD M. ROSEN (1965-2014)

OF COUNSEL

ANDREW R. BROWNSTEIN
MICHAEL H. BYOWITZ
KENNETH B. FORREST
BEN M. GERMANA
SELWYN B. GOLDBERG
PETER C. HEIN
JB KELLY
JOSEPH D. LARSON
LAWRENCE S. MAKOW
PHILIP MINDLIN
THEODORE N. MIRVIS
DAVID S. NEILL
HAROLD S. NOVIKOFF
ERIC S. ROBINSON
ERIC M. ROSOF
MICHAEL J. SEGAL
WON S. SHIN
DAVID M. SILK
ROSEMARY SPAZIANI
ELLIOTT V. STEIN
LEO E. STRINE, JR.*
PAUL VIZCARRONDO, JR.
JEFFREY M. WINTNER
AMY R. WOLF
MARC WOLINSKY

* ADMITTED IN DELAWARE

COUNSEL

DAVID M. ADLERSTEIN
SUMITA AHUJA
FRANCO CASTELLI
ANDREW J.H. CHEUNG
PAMELA EHRENKRANZ
KATHRYN GETTLES-ATWA
ADAM M. GOGOLAK
ANGELA K. HERRING
MARK A. KOENIG
CARMEN X.W. LU
J. AUSTIN LYONS
ALICIA C. McCARTHY
JUSTIN R. ORR
NEIL M. SNYDER
JEFFREY A. WATIKER

ELAINE P. GOLIN
EMIL A. KLEINHAUS
KARESSA L. CAIN
RONALD C. CHEN
BRADLEY R. WILSON
GRAHAM W. MELI
GREGORY E. PESSIN
CARRIE M. REILLY
MARK F. VEBLEN
SARAH K. EDDY
VICTOR GOLDFELD
RANDALL W. JACKSON
BRANDON C. PRICE
KEVIN S. SCHWARTZ
MICHAEL S. BENN
ALISON ZIESKE PREISS
TIJANA J. DVORNIC
JENNA E. LEVINE
RYAN A. McLEOD
ANITHA REDDY
JOHN L. ROBINSON
JOHN R. SOBOLEWSKI

STEVEN WINTER
EMILY D. JOHNSON
JACOB A. KLING
RAAJ S. NARAYAN
VIKTOR SAPEZHNIKOV
MICHAEL J. SCHOBEL
ELINA TETELBAUM
ERICA E. BONNETT
LAUREN M. KOFKE
ZACHARY S. PODOLSKY
RACHEL B. REISBERG
MARK A. STAGLIANO
CYNTHIA FERNANDEZ LUMERMANN
CHRISTINA C. MA
NOAH B. YAVITZ
BENJAMIN S. ARFA
NATHANIEL D. CULLERTON
ERIC M. FEINSTEIN
ADAM L. GOODMAN
STEVEN R. GREEN
MENG LU

January 19, 2024

VIA ONLINE SUBMISSION

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

Re: *Zoetis Inc.*
Shareholder Proposal Submitted by the New York City Carpenters Pension Fund

Ladies and Gentlemen:

This letter is submitted on behalf of Zoetis Inc. (the "Company") to confirm to the Staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intends to exclude from its proxy statement and form of proxy for its 2024 annual meeting of shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statement in support thereof received from the New York City Carpenters Pension Fund (the "Proponent").

For the reasons outlined below, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2024 Proxy Materials.

In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, this letter is being filed with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent. On behalf of the Company, we confirm that the Company will promptly forward to the Proponent any Staff response to this no-action request that the Staff transmits only to the Company.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

SUMMARY OF THE PROPOSAL

The Proposal sets forth the following proposed resolution for the vote of the Company's shareholders at its 2024 annual meeting of shareholders:

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

A full copy of the Proposal and statement in support thereof is attached to this letter as Exhibit A hereto.

BASIS FOR EXCLUSION

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

- Rule 14a-8(i)(2) because the Proposal would cause the Company to violate Delaware law;

- Rule 14a-8(i)(6) because the Company lacks the power to implement the Proposal; and

- Rule 14a-8(i)(3) because the Proposal is inherently vague and indefinite, and subject to multiple interpretations, such that the Company and its shareholders voting on the Proposal would not know with any reasonable certainty exactly what actions or measures the Proposal requires.

ANALYSIS

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

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal if implementation of the proposal would cause the company to violate any state, federal or foreign law to which it is subject. The Company is incorporated under the laws of the State of Delaware. For the reasons set forth below and in the legal opinion regarding Delaware law from Morris, Nichols, Arsht & Tunnell LLP, attached hereto as Exhibit B (the "Delaware Counsel Opinion"), the Company believes that the Proposal is excludable under Rule 14a-8(i)(2) because, if implemented, the Proposal may cause the Company to violate Section 141(a) of the Delaware General Corporation Law (the "DGCL").

As explained in further detail in the Delaware Counsel Opinion, the Proposal, if adopted, would require the Board of Directors of the Company (the "Board") to accept a holdover director's previously tendered resignation "absent the finding of a compelling reason or reasons to not accept the resignation." Under Section 141(a) of the DGCL, the business and affairs of a corporation are "managed by or under the direction of a board of directors" except as otherwise provided under the DGCL or the corporation's certificate of incorporation. In interpreting Section 141(a) of the DGCL, Delaware courts have consistently held that a board may not unilaterally impose intra-governance restrictions on future boards that relate to a fundamental matter of corporate governance in a company's bylaws. Delaware courts have expressly held that matters relating to the selection of director candidates are a fundamental matter of corporate governance and have invalidated agreements that prevent future directors from freely choosing director candidates. Delaware courts have also held that Section 141(a) of the DGCL confers any newly elected board the *full* power to manage and direct the business and affairs of a Delaware corporation, which affairs include the nomination of director candidates.

The Proposal, however, requires the Board to provide a "compelling" reason or reasons for rejecting a tendered resignation. While the Proposal or its supporting statement does not define what constitutes a "compelling" reason, Delaware courts have historically applied this test only under extenuating circumstances and imposed an onerous burden for directors to satisfy. As explained in further detail in the Delaware Counsel Opinion, the "compelling" justification test is so onerous that the Delaware Supreme Court has declined to apply the test in the context of a corporate election or a stockholder vote involving corporate control. If a bylaw applying the "compelling" justification test were adopted, it is likely that any director resignation tendered for the consideration of the Board would be accepted, a result that would be contrary to Section 141(a) of the DGCL and Delaware case law interpreting Section 141(a), which has held that directors must use their best judgment on matters of board composition.

The Staff has consistently permitted the exclusion of proposals which, if implemented, would result in a violation of state law, including Delaware law. *See Alaska Air Group, Inc.* (Mar. 20, 2023) (permitting exclusion of a proposal requesting, among other things, the board of directors to take steps to enable both street name and non-street name shareholders to formally participate in acting by written consent on the basis that the proposal, if implemented, would violate Section 228 of the DGCL); *Quotient Technology Inc.* (May 6, 2022) (permitting exclusion of a proposal requesting the board of directors disqualify all shares owned and/or controlled by executive officers from voting to approve a tax benefits preservation plan on the basis that Delaware law prohibits unilateral board actions that disenfranchised stockholders); *eBay Inc.* (Apr. 1, 2020) (permitting exclusion of a proposal requesting the company permit employees to elect at least 20% of the board of directors on the basis that such action would be contrary to Sections 211(b) and 212(a) of the DGCL); *PayPal Holdings, Inc.* (Mar. 9, 2018) (permitting exclusion of a proposal requesting, among other things, the board of directors make certain amendments to the company's charter in violation of Delaware law); *The Goldman Sachs Group, Inc.* (Feb. 1, 2016) (permitting exclusion of a proposal requesting the board of directors include outside experts on the compensation committee on the basis that such action would violate Section 141(c) of the DGCL).

In addition, the Staff has also specifically permitted the exclusion of proposals which, if implemented, would create intra-governance restrictions on the board in violation of Sections 141(a) of the DGCL. For example, in *Bank of America Corporation* (Feb. 23, 2012), the Staff permitted the exclusion of a proposal requesting the board of directors take action to minimize the indemnification of directors to the extent fully permissible under the DGCL on the basis that such action would violate the prohibition on intra-governance restrictions under Delaware law. *See also Monsanto Company* (Nov. 7, 2008, *recon. denied*, Dec. 18, 2008) (permitting exclusion of a proposal requesting the board of directors to require all directors to take an oath of allegiance to the United States Constitution on the basis that such action constituted an intra-governance restriction that would limit directors from fully discharging their duties under Section 141(a) of the DGCL).

The Proposal would, if adopted, unduly constrain the ability of the Board to make determinations with respect to the composition of the Board and take actions consistent with their fiduciary duties to the Company. Accordingly, the Proposal may be properly excluded from the Company's 2024 Proxy Materials under Rule 14a-8(i)(2).

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

Rule 14a-8(i)(6) allows a company to exclude a proposal if the company would lack the power or authority to implement the proposal. As described above, the Proposal would, if implemented, cause the Company to violate Delaware law. The Staff has on numerous occasions permitted exclusion under Rule 14a-8(i)(6) of proposals that would cause the company to violate the law of the jurisdiction of its incorporation. *See Arlington Asset Investment Corp.* (Apr. 23, 2021) (permitting exclusion of a proposal that would violate Virginia law); *eBay Inc.* (Apr. 1, 2020) (permitting exclusion of proposal that would violate Delaware law); *Highlands REIT, Inc.* (Feb. 7, 2020) (permitting exclusion of proposal that would violate Maryland law); *NiSource Inc.* (Mar. 22, 2010) (permitting exclusion of proposal that would violate Delaware law); *Schering-*

Plough Corp. (Mar. 27, 2008) (permitting exclusion of proposal that would violate New Jersey law), *AT&T, Inc.* (Feb. 19, 2008) (permitting exclusion of a proposal that would violate Delaware law).

III. The Proposal May Be Excluded under Rule 14a-8(i)(3) Because It Is Contrary to the Proxy Rules.

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials 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 interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with exclusion of shareholder proposals on the basis that "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainly exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 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).

Consequently, the Staff has routinely permitted the exclusion of proposals that fail to define key terms, contain only general or uninformative references as to steps to be taken, or otherwise fail to provide sufficient clarity or guidance to enable either shareholders or the company to understand how the proposal would be implemented. For example, the Staff has noted that a proposal may be excludable when the "meaning and application of terms and conditions . . . in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations" such that "any action ultimately taken by the company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (Mar. 12, 1991) (permitting exclusion of a proposal to prohibit "any major shareholder . . . which currently owns 25% of the Company and has three Board seats from compromising the ownership of the other stockholders," where the meaning and application of such terms as "any major shareholder," "assets/interest" and "obtaining control" would be subject to differing interpretations). *See also Apple Inc.* (Dec. 22, 2021) (permitting exclusion of a proposal requesting that the company convert to a "public benefit corporation" without clarifying how the company should implement such proposal); *The Boeing Company* (Feb. 23, 2021) (permitting exclusion of a proposal requiring that 60% of the company's directors "must have an aerospace/aviation/engineering executive background" where such phrase was undefined); *Apple Inc.* (Dec. 6, 2019) (permitting exclusion of a proposal seeking to "improve guiding principles of executive compensation" that did not provide an explanation or definition of the key term "executive compensation"); *eBay Inc*. (Apr. 10, 2019) (permitting exclusion of a proposal requesting that the company "reform the company's executive compensation committee" because "neither shareholders nor the Company would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting," and that, therefore, "the proposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading"); *Cisco Systems, Inc.* (Oct. 7, 2016)

(permitting exclusion of a proposal requesting that the board "not take any action whose primary purpose is to prevent the effectiveness of shareholder vote without a compelling justification for such action," where it was unclear what board actions would "prevent the effectiveness of [a] shareholder vote" and how the essential terms "primary purpose" and "compelling justification" would apply to board actions); and *AT&T Inc.* (Feb. 21, 2014) (permitting exclusion of a proposal requesting a review of policies and procedures related to the "directors' moral, ethical and legal fiduciary duties and opportunities," where such phrase was undefined).

The Proposal requests that the Board adopt a bylaw which, among other things, would require the Board to accept a holdover director's previously tendered resignation "absent the finding of a compelling reason or reasons to not accept the resignation." Neither the Proposal nor the supporting statement define what may constitute a "compelling" reason or reasons. While the "compelling" standard has been applied in Delaware case law, shareholders voting on the Proposal may choose to interpret the term in a variety of ways, including applying a less onerous standard than the standard traditionally applied by the Delaware courts. Given the myriad ways that shareholders may choose to define what may constitute a "compelling" reason to not accept a director resignation, it would be particularly difficult for the Board to implement the Proposal without being second guessed by shareholders.

Given that the Proposal includes a key term that is undefined and indefinite such that neither shareholders voting on it, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty what actions or measures the Proposal requires, we ask that the Staff concur that the Company may exclude the Proposal from its 2024 Proxy Materials under Rule 14a-8(i)(3) on the basis that the Proposal is inherently vague and indefinite, in violation of Rule 14a-9.

CONCLUSION

Based on the foregoing analyses, the Company respectfully requests the Staff's concurrence with the Company's view or, alternatively, that the Staff confirm that it will not recommend any enforcement action if the Company excludes the Proposal from the 2024 Proxy Materials.

If we can be of any further assistance in this matter, please do not hesitate to call me at (212) 403-1138. If the Staff is unable to concur with the Company's conclusions without additional information or discussions, the Company respectfully requests the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. In accordance with Staff Legal Bulletin No. 14F, Part F (Oct. 18, 2011), please kindly send your response to this letter by email to CXWLu@wlrk.com.

Very truly yours,

Carmen X. W. Lu

Enclosures

cc: Heidi C. Chen, Zoetis Inc.
Salvatore (S.J.) Gagliardi, Zoetis Inc.
Lauren Luptak, Zoetis Inc.
Eric S. Klinger-Wilensky, Morris, Nichols, Arsht & Tunnell LLP
James D. Honaker, Morris, Nichols, Arsht & Tunnell LLP
Michael Piccirillo, New York City Carpenters Pension Fund

EXHIBIT A

Proponent's Proposal and Supporting Statement

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: [redacted]
FAX: [redacted]
www.nycdistrictcouncil.com

SENT VIA OVERNIGHT UPS

December 5, 2023

Heidi C. Chen
Executive Vice President, General Counsel
and Corporate Secretary
Zoetis, Inc.
10 Sylvan Way
Parsippany, NJ 07054

Dear Ms. Chen:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the New York City Carpenters Pension Fund ("Fund"), for inclusion in the Zoetis, 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 [redacted] Mr. Piccirillo will be available to discuss the proposal on Tuesday, December 19, or Tuesday, December 26, from 1:00PM to 5:00PM (ET) either day or other mutually agreeable date and time. Please forward any correspondence related to the proposal to Mr. 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

Director Election Resignation Bylaw Proposal

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

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

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

Exhibit B

Opinion of Morris, Nichols, Arsht & Tunnell LLP

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

January 19, 2024

Zoetis Inc.
10 Sylvan Way
Parsippany, New Jersey 07054

Ladies and Gentlemen:

This letter confirms our advice with respect to a stockholder proposal (the "Proposal") submitted by the New York City Carpenters Pension Fund (the "Proponent") to Zoetis Inc., a Delaware corporation (the "Company"), for inclusion in the Company's proxy materials for its next annual meeting of stockholders. For the reasons set forth below, to the extent the Proposal, if implemented, requires the Board of Directors of the Company (the "Board") to accept a resignation in circumstances where doing so would violate its fiduciary duties, the Proposal, in our opinion, would violate Delaware law.

The Proposal

The Proponent urges the Board to adopt a new resignation bylaw that requires the Board to make an affirmative determination whether to accept the resignation of a director who has not been reelected by a majority vote of stockholders, yet significantly restricts the Board's discretion in doing so. The Proposal would require the Board to accept a resignation unless it has a "compelling reason" not to do so, and, if the director fails to be elected at the next annual meeting, then the resignation would be automatically effective without any Board action following that second annual meeting:[1]

> **Resolved:** That the shareholders of Zoetis Inc. (the "Company") hereby request that the board of directors take the necessary action to adopt a director election resignation bylaw that requires each director nominee to submit an irrevocable conditional resignation to the Company to be effective upon the director's failure to receive the required shareholder majority vote support in an uncontested election. The proposed resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons not to 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

[1] For the reasons explained in the final footnote of this letter, we need not address the resignation that is effective in connection with a failed election at the second annual meeting of stockholders.

> should a "holdover" director fail to be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

We understand that the Company already has majority voting for director elections. Each director tenders a resignation that is effective if: (i) the candidate is not reelected by a majority vote at a future uncontested election and (ii) the Board accepts the resignation. The Board may determine not to accept a resignation for any reason under its current policy.

Delaware Law on Director Resignations for Majority Voting

The Delaware General Corporation Law (the "DGCL") permits a director to make a future effective resignation irrevocable in connection with majority voting. Section 141(b) of the DGCL provides, "[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." This provision was added to the DGCL in 2006 to clarify that a director will not violate the DGCL or public policy by irrevocably committing, today, to resign at a future time where the circumstances surrounding his or her resignation are uncertain. The only requirement is that the resignation result from the failure to be reelected.

The validity of the Proposal does not end with Section 141(b), however. While Section 141(b) permits *an individual director* wide latitude to tender an irrevocable resignation with no conditions other than a failed reelection, Section 141(b) is silent on *the Board's* authority and duties when the directors decide to adopt the majority voting scheme. The Proposal applies to all directors and requires Board action to enact the majority voting scheme. Specifically, the Proposal urges the Board to adopt a bylaw that requires directors to tender an irrevocable resignation, and the Board must solicit irrevocable resignations from each director and affirmatively accept the resignation unless it has a "compelling reason" not to.

Delaware law Invalidating Intra-Governance Arrangements that Limit Future Directors

The Board's actions are governed by Section 141(a) of the DGCL and the case law interpreting it. Under Section 141(a), "[t]he business and affairs of every [Delaware] corporation . . . shall be managed by or under the direction of a board of directors, except as may be otherwise provided in [the DGCL] or in its certificate of incorporation."[2] The Delaware Supreme Court has held that a board cannot adopt an intra-governance restriction that would prevent a future board from "completely discharging its fundamental management duties to the corporation."[3] Nor can a

---

[2] The Proposal does not seek any amendment to the Company's Certificate of Incorporation, so that part of Section 141(a) of the DGCL and related Delaware case law does not apply to the Proposal.

[3] *Quickturn Design Sys. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) (invalidating a "delayed redemption provision" that, under certain circumstances, would have prevented newly elected directors from redeeming a stockholder rights plan for a six-month period).

governing document other than the certificate of incorporation "limit in a substantial way the freedom of … directors' decisions on matters of management policy."[4]

Decisions regarding the composition of the Board involve "fundamental" management decisions at the heart of management, and the Court has invalidated intra-governance provisions that prevent future directors from making decisions on the future composition of the Board. In *Chapin v. Benwood Foundation, Inc.*, the Delaware Court of Chancery invalidated a multi-year agreement among four directors of a corporation, pursuant to which each director named a desired nominee to succeed him as a director and all of the other directors agreed to vote in favor of the successor no matter how circumstances might change in the future.[5] The Court held the agreement "should be controlled by the long-standing rule that directors of a Delaware corporation may not delegate to others those duties which lay at the heart of the management of the corporation."[6] Decisions on the future composition of the board are at the heart of management:

> [Directors owe] a duty to use their best judgment in filling a vacancy on the board of [directors] as of the time the need arises. To commit themselves in advance – perhaps years in advance – to fill a particular board vacancy with a certain named person, regardless of the circumstances that may exist at the time that the vacancy occurs, is not the type of agreement that this Court should enforce . . . .[7]

The Delaware Supreme Court later relied on Section 141(a) of the DGCL to invalidate an attempt by a board of directors to unilaterally restrict a future board's response to an offer to acquire the corporation. In *Quickturn Design Systems, Inc.*, a bidder made a hostile tender offer to acquire the corporation's stock. The target corporation had in place a stockholder rights plan that would effectively prohibit the bidder from acquiring more than 15% of the stock. The board of directors amended the rights plan to add a novel "Delayed Redemption Provision," which prohibited newly elected directors from terminating the rights plan for a six-month period following their election if the purpose of termination was to facilitate a transaction with any bidder who supported the election of those directors to the board. The Court invalidated the Delayed Redemption Provision:

> The Delayed Redemption Provision … would prevent a newly elected board of directors from completely discharging its fundamental management duties to the corporation and its stockholders for six months. While the Delayed Redemption Provision limits the board of directors' authority in only one respect, … it

---

4 *Id.* at 1292 (quoting *Abercrombie v. Davies*, 123 A.2d 893, 899 (Del. Ch. 1956), *rev'd on other grounds*, 130 A.2d 338 (Del. 1957) (invalidating a contract provision that required directors to vote in favor of actions supported by seven of fifteen directors and to abide by the decision of an arbitrator in the event of certain board deadlocks)).

5 402 A.2d 1205 (1979). The corporation at issue was a non-profit membership corporation that referred to its directors as "trustees," but the Court recognized that they were the equivalent of directors for purposes of the DGCL.

6 *Id.* at 1210.

7 *Id.* at 1211.

> nonetheless restricts the board's power in an area of fundamental importance to the shareholders—negotiating a possible sale of the corporation. Therefore, we hold that the Delayed Redemption Provision is invalid under Section 141(a), which confers upon any newly elected board of directors full power to manage and direct the business and affairs of a Delaware corporation.[8]

The decision whether to accept or reject a director resignation after a failed reelection vote presents the same fundamental governance issues that lay at the heart of management. There are instances where a board may believe it should reject director resignations to avoid harm to the corporation.[9] For example:

- If a majority of the directors are not reelected at a single stockholder meeting, the acceptance of the resignations may have significant change of control and continuity of management issues.

- A director with particular qualifications may need to remain on the Board, notwithstanding a failed reelection vote, to maintain compliance with audit committee or other stock exchange listing requirements.

- More broadly, a director who was not reelected may bring other unique qualifications or experience to the Board compared to the remaining composition of the Board.

- And there is the unknown. No board can fully anticipate, today, what harm might befall the corporation in connection with a failed election of one or more directors at a future stockholder meeting.

The Problems with a Compelling Reason Standard

In our view, it would be impermissible for the Board to be required to limit its discretion regarding these matters by requiring future directors to accept a resignation absent a "compelling reason" for rejecting a director's resignation. The Proposal does define what constitutes a "compelling reason," so we believe the Board would likely need to look to the line of cases where the Delaware courts have applied a "compelling justification" standard of review

---

[8] 721 A.2d at 1291-92.

[9] As noted above, a limitation on board discretion might be permissible if it is included in the certificate of incorporation, but the Proponent has not asked the board and stockholders to undertake the process for approving an amendment to the certificate. Nor are the restrictions being proposed in connection with a corporate or commercial transaction. A limitation on board discretion may be permissible if it is imposed in a commercial agreement or arrangement, such as a limitation on board discretion granted in exchange for bargained-for consideration given to the Company or to induce actions that benefit the Company or its stockholders. The restrictions on the Board urged by the Proponent are instead intra-governance measures (much like the succession agreement in *Chapin* and the rights plan in *Quickturn*) that are subject to the provisions of Section 141(a) of the DGCL.

to determine whether directors have complied with their fiduciary duties.[10] The Delaware courts historically have applied this test only in egregious circumstances, such as where directors have acted with the primary purpose of interfering with a contested director election or a contest for control of the corporation.[11]

The compelling justification test is an "onerous" burden for directors to satisfy.[12] It applies in instances where directors are attempting to interfere with the voting powers allocated to stockholders, and accordingly the normal good faith, business judgments that apply to other management decisions do not provide a compelling justification for the board's actions. Under the case law assessing whether a compelling justification exists, "the notion that directors know better than the stockholders who should run the company" is not a compelling justification.[13] The "know better" defense "standing alone, is no justification at all for the board to interfere with a contest for corporate control."[14]

The compelling justification test is so onerous that the Delaware Supreme Court recently retired the concept in the context of a corporate election or a stockholder vote involving corporate control.[15] The Court observed that the compelling justification standard "turned out to be unworkable in practice. Once the court required a compelling justification to justify the board's action, the outcome was, for the most part, preordained."[16] Specifically, as the Court of Chancery observed, "[i]n reality, invocation of the [compelling justification] standard of review usually signals that the court will invalidate the board action under examination."[17] The Delaware Supreme Court replaced the compelling justification test in this context with a more refined application of a reasonableness, or proportionality, test. Under the application of the reasonableness test, "[t]o guard against unwarranted interference with corporate elections or stockholder votes in contests for corporate control, a board that is properly motivated and has identified a legitimate threat [to the corporation] must tailor its response to only what is necessary to counter that threat."[18]

---

[10] *See Winston v. Mandor*, 710 A.2d 835, 843 (Del. Ch. 1997) (utilizing case law and a section of the DGCL to interpret a section of a certificate of designation); *see also City of Providence v. First Citizens Bancshares, Inc.*, 99 A.3d 229, 234 (Del. Ch. 2014) (utilizing case law and relevant DGCL statutes to determine the validity of a bylaw provision); *see also H.F. Ahmanson & Co. v. Great W. Fin. Corp.*, 1997 WL 305824, at *13-15 (Del. Ch. June 3, 1997) (utilizing case law to assist in the interpretation and construction of a bylaw provision and statute).

[11] *See MM Cos. v. Liquid Audio, Inc.*, 813 A.2d 1118, 1127-29 (Del. 2003); *see also Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659-63 (Del. Ch. 1988).

[12] *See Coster v. UIP Cos.*, 300 A.3d 656, 667-73 (Del. 2023).

[13] *Id.* at 670 (quoting *Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 811 (Del. Ch. 2007)).

[14] *Id.* at 670.

[15] *See In re Columbia Pipeline Grp.*, 299 A.3d 393, 459 (Del. Ch. 2023) (citing *Coster*, 300 A.3d at 672-73).

[16] *Coster*, 300 A.3d at 696.

[17] *Id.* at 696 n.69 (quoting *Chesapeake Corp. v. Shore*, 771 A.2d 293, 323 (Del. Ch. 2000)).

[18] *Id.* at 672. Of course, the retirement of the compelling justification test does not mean that the Supreme Court disavowed the outcomes of the cases invalidating director actions, and the concerns expressed by that test are still monitored closely by the Delaware courts under the reasonableness test. *See In re AMC Ent. Holdings, Inc.*

We believe a bylaw, combined with a conditional resignation, can include a role for the board to accept or reject a resignation. But in our view, that role, once granted, cannot be confined to an undefined, unqualified reference to a "compelling reason" test. Under the case law, it is not a compelling justification or reason for the Board to assert that the directors "know better" than the stockholders on who should serve on the Board. Applying an undefined compelling justification or reason test to resignations would therefore mean in most circumstances it would be a "preordained" conclusion that the Board must reject the resignation. This result is the exact opposite of the Court of Chancery's admonition in *Chapin* that the directors must use their "best judgment" on matters of board composition when and as the need arises in the future.

The compelling justification test is an onerous standard precisely because it has been applied by the Delaware courts when directors have engaged in inequitable conduct: with the primary purpose of interfering with stockholder voting rights. But no such interference would occur in most majority voting elections. The stockholders will have the chance to freely cast their votes for or against nominees, and the Board must account for the stockholders' views in determining whether to accept the resignation. In our view, choosing a test that has been associated with wrongful or inequitable conduct by directors would create a standard that impermissibly restricts the future actions of the Board to decide how to address a resignation.[19]

* * *

Stockholder Litig., 2023 WL 5165606, at *29 (Del. Ch. Aug. 11, 2023) ("Outside the director election or corporate control setting, I read the weight of authority to call for a reasonableness analysis and to permit the 'fit' between the means and ends to be looser than in the corporate control setting.").

[19] Our analysis would likely be different if the reference to a "compelling reason" were merely in a board policy. A board policy merely references a current statement of intention as to how directors will approach a decision. The Proposal, in contrast, would anchor the "compelling reason" standard in the irrevocable resignation and bylaws themselves, creating a level of binding commitment that is problematic outside a certificate of incorporation under Section 141(a) of the DGCL. Similarly, our analysis may different if a board of directors developed an understanding of what would constitute a "compelling reason" to reject a resignation or if there is other extrinsic evidence or course of dealing to give that term meaning. But here, the Proponent asks the Board to adopt the "compelling reason" standard without providing, in the Proposal or supporting statement, any context for how the directors should apply such standard in practice. Absent context or interpretive guides, the Proposal could be read to require the Board to apply the compelling justification test as it has been applied under Delaware case law, which is problematic for the reasons described above.

For these reasons, we believe a "compelling reason" standard could, in certain circumstances, require the Board to accept a resignation when their fiduciary duties require otherwise.[20] In our opinion, in those circumstances, the Proposal, if implemented, would violate Delaware law.

Very truly yours,

Morris, Nichols, Arsht & Tunnell LLP

17587861

[20] We need not express an opinion on the part of the Proposal that contemplates an automatic resignation if a director suffers a failed election at a second annual meeting of stockholders. This future effective resignation does not contemplate director action. Directors would also have a year from the first failed election to take alternative measures to safeguard the corporation from harm. Finally, this part of the Proposal is not cast in the problematic "compelling reason" rubric.