GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Thomas J. Kim
Direct: +1 202.887.3550
Fax: +1 202.530.9605
tkim@gibsondunn.com

December 28, 2023

VIA INTERNET SUBMISSION

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

Re: *AT&T Inc.*
Stockholder Proposal of the New York City Carpenters Pension Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, AT&T Inc. ("AT&T" or the "Company"), intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Stockholders (collectively, the "2024 Proxy Materials") a stockholder proposal (the "Proposal") and statement in support thereof received from the New York City Carpenters Pension Fund (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (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 such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal, entitled "Director Election Resignation Bylaw," states:

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

A copy of the Proposal, the supporting statement, and related correspondence from the Proponent are attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(i)(2) because implementing the Proposal would cause the Company to violate state law.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(2) Because Implementing The Proposal Would Cause The Company To Violate State Law

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

Rule 14a-8(i)(2) allows the exclusion of a stockholder proposal if implementation of the proposal would "cause the company to violate any state, federal, or foreign law to which it is subject." *See The Goldman Sachs Group, Inc.* (avail. Feb. 1, 2016); *Kimberly-Clark Corp.* (avail. Dec. 18, 2009); *Bank of America Corp.* (avail. Feb. 11, 2009). As discussed below and for the reasons set forth in the legal opinion provided by Richards, Layton & Finger, P.A., the Company's Delaware counsel, attached hereto as Exhibit B (the "Delaware Law Opinion"), we believe that the

Proposal is excludable under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Delaware law.

On numerous occasions, the Staff has concurred with the exclusion of stockholder proposals where the proposal, if implemented, would cause a company to violate state law. For example, the proposal in *Johnson & Johnson* (avail. Feb. 16, 2012) sought to limit the ability of the board of directors to appoint directors to the compensation committee if such directors received a certain number of "no" or "withhold" votes in a director election. The Staff concurred that the proposal could be excluded because its implementation would violate New Jersey law—which provides that decisions regarding committee composition are exclusively left to the board of directors—by limiting the decision-making authority of the board to select such committee members in the exercise of its fiduciary duties. The proposal in *Oshkosh Corp.* (avail. Nov. 21, 2019) requested that the company amend its bylaws to require that a director who received less than a majority vote be removed from the board "immediately." The Staff concurred with the proposal's exclusion under Rule 14a-8(i)(2) because implementing it would cause the company to violate Wisconsin law, which provided two methods for the removal of directors—by a stockholder vote or by a judicial proceeding—and neither was immediate or an action the company or its board could unilaterally take. *See also IDACORP, Inc.* (avail. Mar. 13, 2012) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal requesting that the company amend its bylaws to implement majority voting for director elections where Idaho law provided for plurality voting unless a company's certificate of incorporation provided otherwise); *Ball Corp.* (avail. Jan. 25, 2010, *recon. denied* Mar. 12, 2010) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal that would cause the company to violate Indiana law relating to board classification); *Bank of America Corp.* (avail. Feb. 11, 2009) (concurring with the exclusion under Rule 14a-8(i)(2) of a stockholder proposal to amend the company's bylaws to establish a board committee and authorize the board chairman to appoint members of the committee that would cause the company to violate Delaware law).

Here, implementation of the Proposal would cause the Company to violate Delaware law because the Proposal impermissibly seeks (i) to limit the decision-making authority of the Company's Board of Directors (the "Board") in contravention of its fiduciary duties and (ii) to permit stockholders to effect the removal of a director without the statutorily required vote. Accordingly, the Proposal may properly be excluded under Rule 14a-8(i)(2).

B. Implementation Of The Proposal Would Cause The Company To Violate Delaware Law

The Bylaws of the Company (the "Bylaws") require each director who fails to receive a majority of the votes cast in an uncontested election to submit a conditional resignation. The Proposal requests that the Board amend the applicable provision of the Bylaws to require the Board to accept such a tendered resignation unless the Board finds a "compelling reason or reasons" not to

accept the resignation. The amendments to the Bylaws contemplated by the Proposal would thus impose a "compelling reasons" standard on decisions made by the current and future Boards with respect to resignations tendered by directors in accordance with the Bylaws provision. In addition, the Proposal would require that, in situations where the Board finds compelling reasons not to accept a director's tendered resignation and the director thus continues as a "holdover" director, if such director fails to receive a majority of the votes cast at the next annual meeting of stockholders, such director's resignation "will be automatically effective 30 days after the certification of the election vote." The amendment contemplated by the Proposal would thus establish, for the removal of any such holdover director, a voting standard based on less than a majority of the votes cast at the meeting.

i. The Proposal Would Cause The Company To Violate Delaware Law Because It Would Limit The Board's Decision-Making Authority In Contravention Of Its Fiduciary Duties

The Company is incorporated in Delaware and is governed by Delaware law. As discussed in detail in the Delaware Law Opinion, in accordance with Section 141(a) of the Delaware General Corporation Law (the "DGCL"), the Board possesses the full power and authority to manage the business and affairs of the Company. In making business decisions consistent with this authority, directors owe duties of care and loyalty to the corporation and all of its stockholders, which requires them to base their decisions on what they reasonably believe to be in the best interests of the corporation and its stockholders. The decision whether to accept a director's resignation is one such business decision for the Board in which it is required to exercise its fiduciary duties.

Notably, as outlined in the Delaware Law Opinion, the Delaware courts have held that a bylaw that purports to mandate a substantive decision on the part of the board of directors without regard to the application of the directors' fiduciary duties violates Section 141(a) of the DGCL. The Proposal does just that by requesting amendments to the Bylaws that would mandate current and future directors of the Company to make substantive decisions about whether to accept a director's tendered resignation based on a "compelling reasons" standard that has meaning only if it would require the directors to accept such a resignation in circumstances where proper application of their fiduciary duties would cause them to decide otherwise. As such, the Delaware Law Opinion concludes that, "[b]ecause the bylaw provision contemplated by the Proposal mandates the Company's current and future directors accept director resignations based on a compelling reasons standard that does not take into account the director's fiduciary duties, it violates Delaware law."

ii. The Proposal Would Cause The Company To Violate Delaware Law Because It Would Permit Stockholders To Effect The Removal Of A Director Without The Statutorily Required Vote

In addition, Section 141(k) of the DGCL provides that, other than with respect to certain exceptions that are not applicable to the Company, "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" (emphasis added). As discussed in detail in the Delaware Law Opinion, "[t]he Delaware courts have held that a bylaw provision that purports to permit the stockholders to remove directors by a lesser voting standard than required by Section 141(k) is invalid under Delaware law." The amendments contemplated by the Proposal purport to fix the stockholder vote required to end the term of a holdover director and remove the holdover director from office as less than a majority of the shares cast at an election of directors. Put differently, if adopted as proposed, the Proposal would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of 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. In this respect, implementing the Proposal would therefore violate Delaware law.

We are aware that in *Genzyme Corporation* (avail. Feb. 8, 2007), the Staff did not concur with the exclusion of a proposal under Rule 14a-8(i)(2) where the company argued that implementing a proposal requesting a majority voting standard in uncontested elections would violate state law because the proposed requirement for directors to submit an irrevocable resignation would operate to remove directors in a manner inconsistent with the Massachusetts "holdover rule." On its face, the Staff's conclusion in *Genzyme* deals with Massachusetts rather than Delaware law. In addition, the Proposal is distinguishable, because the resignation requirement in *Genzyme* was still conditioned on the board's acceptance of the resignation. Here, by contrast, the amendments contemplated by the Proposal are significantly more restrictive, as they provide that the director's resignation "will be automatically effective 30 days after" a holdover director fails to receive a majority of the votes cast at the next annual meeting of stockholders. As discussed in detail above and in the Delaware Law Opinion, the Proposal impermissibly seeks both to limit the Board's ability to exercise its fiduciary duties and to permit stockholders to effect a director's removal without the statutorily required vote, neither of which was at issue in the proposal in *Genzyme*.

Accordingly, just as in *Johnson & Johnson*, *Oshkosh*, and the other precedents cited above, the Proposal may properly be excluded under Rule 14a-8(i)(2) because, as supported by the Delaware Law Opinion, implementing the Proposal would cause the Company to violate state law.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8(i)(2). We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 887-3550.

Sincerely,

/s/ Thomas J. Kim

Thomas J. Kim

Enclosures

cc: Bryan Hough, AT&T Inc.
Moni DeWalt, AT&T Inc.
Richards, Layton & Finger, P.A.
Michael Piccirillo, New York City Carpenters Pension Fund

Exhibit A

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
[redacted]

SENT VIA OVERNIGHT UPS

December 1, 2023

Ms. Stacey Maris
Senior Vice President- Deputy General Counsel
And Secretary
AT&T, Inc.
208 S. Akard Street, Suite 2951
Dallas, TX 75202

Dear Ms. Maris:

I hereby submit the enclosed shareholder proposal ("Proposal") on behalf of the New York City Carpenters Pension Fund ("Fund"), for inclusion in the AT&T, 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

Joseph A. Geiger
Fund Co-Chair - Trustee

cc. Michael Piccirillo
Edward J. Durkin
Enclosure

Director Election Resignation Bylaw Proposal

Resolved: That the shareholders of AT&T, 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

RICHARDS LAYTON & FINGER

December 28, 2023

AT&T Inc.
208 S. Akard Street
Dallas, Texas 75202

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

Ladies and Gentlemen:

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

For the purpose of rendering our opinion as expressed herein, we have been furnished with and have reviewed the following documents: (i) the Restated Certificate of Incorporation of the Company as filed with the Secretary of State of the State of Delaware (the "Secretary of State") on December 13, 2013, as amended by the Certificates of Designation filed with the Secretary of State on December 11, 2019 and February 14, 2020 (collectively, the "Certificate of Incorporation"); (ii) the Bylaws of the Company, effective as of January 27, 2023 (the "Bylaws"); and (iii) the Proposal.

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

THE PROPOSAL

The Proposal states the following:

> **Resolved:** That the shareholders of AT&T, 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 resignation bylaw shall require the Board to accept a tendered resignation absent the finding of a compelling reason or reasons to not accept the resignation. Further, if the Board does not accept a tendered resignation and the director remains as a "holdover" director, the resignation bylaw shall stipulate that should a "holdover" director not be re-elected at the next annual election of directors, that director's new tendered resignation will be automatically effective 30 days after the certification of the election vote. The Board shall report the reasons for its actions to accept or reject a tendered resignation in a Form 8-K filing with the U.S. Securities and Exchange Commission.

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

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

DISCUSSION

The Proposal would violate Delaware law if implemented.

The Proposal requests that the Board amend the provision of the Bylaws that requires each director who fails to receive a majority of the votes casts in an uncontested election to submit a conditional resignation. The amendments to the bylaw provision contemplated by the Proposal would require the Board to accept such a tendered resignation unless the Board finds a "compelling

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

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

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

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

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

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

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

director and remove the holdover director from office as less than a majority of the shares entitled to vote at an election of directors – which the Proposal, if adopted as proposed, would do because it would provide for automatic termination of the director's service based solely on whether the director fails to receive a majority of votes cast, a lower standard than the majority of the shares entitled to vote – it violates Delaware law.

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

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

CONCLUSION

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

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

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

Very truly yours,

Richards, Layton & Finger, P.A.

CSB/JJV