

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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December 8, 2023

VIA ELECTRONIC SUBMISSION

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

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

Ladies and Gentlemen:

We submit this letter on behalf of Whirlpool Corporation (“*Whirlpool*” or the “*Company*”) to notify the U.S. Securities and Exchange Commission (the “*Commission*”) that the Company intends to omit from its proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (the “*2024 Annual Meeting*” and such materials, the “*2024 Proxy Materials*”) a shareholder proposal and supporting statement (the “*Proposal*”) submitted by the New York City Carpenters Pension Fund (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2024 Proxy Materials for the reasons discussed below.

The Company currently expects to file its definitive 2024 Proxy Materials on or around March 6, 2024. Accordingly, in compliance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we have filed this letter with the Commission no later than 80 calendar days before the Company intends to file its definitive 2024 Proxy Materials with the Commission. In light of the Company’s timeline for filing the definitive proxy statement, the Company requests that the Staff respond to this letter prior to February 27, 2024 if practicable.

In accordance with the Staff announcement published on November 7, 2023, we are submitting this letter electronically to the Staff through the online shareholder proposal form. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2024 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to

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the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal sets forth the following resolution to be voted on by shareholders at the 2024 Annual Meeting:

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

A full copy of the Proposal is attached hereto as Exhibit A.

BASIS FOR EXCLUSION

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f) because the Proponent failed to provide the Company with requisite proof of ownership, satisfactory of the requirements of Rule 14a-8(b)(1)(i).

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(b) and Rule 14a-8(f) Because the Proponent Failed to Provide the Requisite Proof of Ownership.

Rule 14a-8(b)(1) provides that in order to be eligible to submit a proposal for a company’s annual meeting, a proponent must have continuously held:

- At least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years; or

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- At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Rule 14a-8(b)(2) provides that if a proponent is not a registered holder of securities and has not made a filing with the Commission demonstrating that the proponent meets the share ownership requirement (as described in Rule 14a-8(b)(2)(ii)(B)), the proponent must submit to the company a written statement from the "record" holder of the proponent's securities verifying that, at the time the proponent submitted the proposal, the proponent continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.

Rule 14a-8(f) provides that if the proponent fails to provide such proof of ownership, the company may exclude the proposal if the company notifies the proponent in writing of such deficiency within 14 calendar days of receiving the proposal and the proponent fails to adequately correct the deficiency. The proponent's response to the company's notice of deficiency must be postmarked or transmitted electronically to the company no later than 14 days from the date the proponent receives the notice of deficiency.

As shown in Exhibit B, the Proposal was received by the Company on November 8, 2023 without any evidence of the Proponent's ownership of Company shares for the required period of time under Rule 14a-8(b)(1)(i). The Proponent's cover letter stated in relevant part that the Proponent "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." Such verification of ownership was never received by the Company. The Company reviewed its stock records, which did not indicate that the Proponent was a record owner of any shares of Company securities.

On November 10, 2023, within 14 calendar days of receiving the Proposal as required by Rule 14a-8(f)(1), the Company notified the Proponent in a letter (attached hereto as Exhibit C) sent by e-mail, followed by a courtesy hard copy sent via Federal Express Priority Overnight on that same date, of the procedural deficiency discussed above (the "Notice of Deficiency"). A copy of the confirmation of delivery of the courtesy hardcopy is attached hereto as Exhibit D.

The Notice of Deficiency described the necessary documentation to prove the requisite ownership of Company shares. The Notice of Deficiency also informed the Proponent that the response must be postmarked or transmitted to the Company no later than 14 calendar days from the date of receipt of the Notice of Deficiency (*i.e.*, no later than November 24, 2023). The

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Proponent did not respond to the Notice of Deficiency. As of the date of this letter, the Company has not received proof of the Proponent's requisite share ownership.

The Staff has consistently permitted exclusion under Rule 14a-8(f) of shareholder proposals where a proponent has failed to provide timely proof of requisite share ownership in response to a timely notice of deficiency from the company. *See, e.g., Yum! Brands, Inc.* (Mar. 31, 2023) (concurring in exclusion of a proposal under Rule 14a-8(f) where the proponent did not provide proof of ownership to satisfy the eligibility requirements within the time set forth in Rule 14a-8); *Meta Platforms, Inc.* (Apr. 2, 2022) (same); *Colgate-Palmolive Company* (Jan. 26, 2022) (same); *Cisco Systems, Inc.* (Aug. 6, 2021) (same); and *Huntsman Corporation* (Jan. 16, 2020) (same).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2024 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such communication regarding this letter should be directed to me at robert.hayward@kirkland.com or (312) 862-2133.

Sincerely,



Robert M. Hayward, P.C.

cc: Bridget Quinn
Whirlpool Corporation

Michael Piccirillo
New York City District Council of Carpenters

Joseph A. Geiger
Fund Co-Chair – Trustee
New York City Carpenters Pension Fund

Enclosures: Exhibit A
Exhibit B
Exhibit C
Exhibit D

EXHIBIT A

Director Election Resignation Bylaw Proposal:

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

Supporting Statement: The Proposal requests that the Board establish a director resignation bylaw to enhance director accountability. The Company has established in its bylaws a majority vote standard for use in an uncontested director election, an election in which the number of nominees equal the number of open board seats. Under applicable state corporate law, a director’s term extends until his or her successor is elected and qualified, or until he or she resigns or is removed from office. Therefore, an incumbent director who fails to receive the required vote for election under a majority vote standard continues to serve as a “holdover” director until the next meeting of shareholders. 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 than 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 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 voting in director elections as a more consequential governance right.

EXHIBIT B

Shareholder Proposal

1 message

Michael Piccirillo [REDACTED]

Wed, Nov 8, 2023 at 10:57 AM

To: [REDACTED]

Cc: [REDACTED]

See Attachments

Michael Piccirillo

NYC District Council Of Carpenters

Area Standards Manager

[REDACTED]

[REDACTED]

2 attachments



Whirlpool Corp NEW YORK FUND SUBMISSION LETTER (002).pdf

83K



Whirlpool. Director Election Resignation Bylaw Proposal.pdf

82K

SENT VIA EMAIL ([REDACTED])

November 8, 2023

Bridget K. Quinn
Deputy General Counsel and Corporate Secretary
Whirlpool Corporation
[REDACTED]
[REDACTED]

Dear Ms. Quinn:

I hereby submit the enclosed shareholder proposal (“Proposal”) on behalf of the New York City Carpenters Pension Fund (“Fund”), for inclusion in the Whirlpool Corporation (“Company”) proxy statement to be circulated in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of director resignations and is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of shares of the Company’s common stock, with a market value of at least \$25,000, which shares have been held continuously for more than a year prior to and including the date of the submission of the Proposal. Verification of this ownership by the record holder of the shares, 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 Monday, November 20 or Tuesday, November 28 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, [REDACTED] or at the email address above.

Sincerely,



Joseph A. Geiger
Fund Co-Chair - Trustee

cc. Michael Piccirillo
Edward J. Durkin

Enclosure

EXHIBIT C



November 10, 2023

BY EMAIL AND FEDERAL EXPRESS

Michael Piccirillo
New York City District Council of Carpenters



Re: Notification of Deficiency under Rule 14a-8

Dear Mr. Piccirillo:

Whirlpool Corporation (the "*Company*") received a letter on November 8, 2023 (the "*Submission Date*") from Mr. Joseph A. Geiger on behalf of the New York City Carpenters Pension Fund (the "*Proponent*") requesting that the Company include the shareholder proposal referenced in the letter (the "*Proposal*") in the Company's proxy materials for its 2024 Annual Meeting of Shareholders (the "*Annual Meeting*").

The Company has reviewed the Proposal and brings to your attention the following deficiency regarding the Proposal's eligibility in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"):

- Failure to provide requisite proof of ownership

Failure to provide proof of requisite ownership

To be eligible to submit a shareholder proposal, the Proponent must submit sufficient proof of continuous ownership for the applicable holding period preceding and including the Submission Date of:

(A) at least \$2,000 in market value of Company stock entitled to vote on the Proposal for at least three years; or

(B) at least \$15,000 in market value of Company stock entitled to vote on the Proposal for at least two years; or

(C) at least \$25,000 in market value of Company stock entitled to vote on the Proposal for at least one year.

Please note that for purposes of (A), (B) or (C), under Rule 14a-8(b)(1)(vi) you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

Whirlpool Corporation Global Headquarters



Our search of the database of our registered shareholders shows that the Proponent is not a shareholder of record. We are therefore unable to verify this ownership requirement. Because the Proponent is not a record holder, the Proponent must provide the Company with documentation as to the Proponent's ownership of the required amount of the Company's shares. Sufficient proof must be in the form of either:

- in the case of (A), (B), or (C), a written statement from the "record" holder of the Proponent's Company stock (usually a broker or bank) verifying that the Proponent continuously held at least \$2,000, \$15,000, or \$25,000 in market value of Company stock for at least three years, two years, or one year, respectively, preceding and including until the Submission Date; or
- a copy of a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5 filed with the Securities and Exchange Commission ("SEC"), or amendments to those documents or updated forms, demonstrating that the Proponent meets at least one of the share ownership requirements pursuant to paragraphs (A) through (C) above.

If you intend to demonstrate the Proponent's ownership by submitting a written statement from the "record" holder of the Proponent's shares, please note that most large U.S. brokers and banks deposit their customers' shares with, and hold those shares through, the Depository Trust Company ("DTC"). Under SEC Staff Legal Bulletins No. 14F ("*SLB 14F*") and 14G ("*SLB 14G*"), only DTC participants and their affiliates are viewed as "record" holders of shares that are deposited at DTC for purposes of satisfying the proof of ownership requirement under Rule 14a-8(b) of the Exchange Act. You can confirm whether the Proponent's bank or broker is a DTC participant by asking such broker or bank or by checking the DTC's participant list, which is currently available on the Internet at: <http://www.dtcc.com/client-center/dtc-directories>.

In these situations, proof of ownership must be obtained from the DTC participant or affiliate thereof through which the Proponent's shares are held, as follows:

- If the Proponent's broker or bank is a DTC participant or affiliate thereof, you must submit proof of ownership from such broker or bank.
- If the Proponent's broker or bank is not a DTC participant or affiliate thereof, the Proponent must submit proof of ownership from the DTC participant or affiliate thereof through which the Proponent's shares are held. You should be able to find out the identity of the DTC participant by asking such broker or bank. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, as of the Submission Date, the Proponent continuously held the requisite amount of shares for the applicable holding period: (1) one from such broker or bank confirming the Proponent's continuous ownership of the Company's shares, and (2) the other from the DTC participant confirming the continuous ownership of the Company's shares by such broker or bank.

Staff Legal Bulletin No. 14L (“SLB 14L”) provides that the following is an acceptable format for such broker or bank to provide the required proof of ownership dated as of the Submission Date for purposes of Rule 14a-8(b):

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least [one year] [two years] [three years], [number of securities] shares of [company name] [class of securities].”

* * *

Rule 14a-8(f) of the Exchange Act requires the Proponent to correct the deficiency noted above in order for the Proposal to be eligible for inclusion in the Company’s proxy materials for the Annual Meeting. The response to this letter must be postmarked or transmitted electronically no later than fourteen (14) calendar days from the date of receipt to the following address:

c/o Corporate Secretary
Whirlpool Corporation



The Company may exclude the Proposal if the Proponent does not meet the procedural requirements set forth in the enclosed rules. However, if the deficiency is corrected within the required time frame, the Company will then address the substance of the Proposal. Even if the defect noted above is remedied in a timely manner, the Company reserves the right to raise any substantive objections it has to the Proposal at a later date.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bridget K. Quinn".

Bridget K. Quinn
Deputy General Counsel
& Corporate Secretary

cc: Joseph A. Geiger, Fund Co-Chair - Trustee

Enclosures:

- Exhibit A - Copy of Rule 14a-8
- Exhibit B - SLB 14F, SLB 14G and SLB 14L

EXHIBIT D



November 28, 2023

Dear Customer,

The following is the proof-of-delivery for tracking number: 645298413166

Delivery Information:

Status:	Delivered	Delivered To:	Mailroom
Signed for by:	M.PICCOLO	Delivery Location:	
Service type:	FedEx Priority Overnight		
Special Handling:	Deliver Weekday; Adult Signature Required		NEW YORK CITY, NY,
		Delivery date:	Nov 13, 2023 09:33

Shipping Information:

Tracking number:	645298413166	Shlp Date:	Nov 10, 2023
		Weight:	0.5 LB/0.23 KG

Recipient:
NEW YORK CITY, NY, US,

Shipper:
BENTON HARBOR, MI, US,

FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Thank you for choosing FedEx