Shelley J. Dropkin
General Counsel
Corporate Governance

Citigroup Inc.
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dropkins@citi.com

December 19, 2008

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

Re: Stockholder Proposal to Citigroup Inc. of Mr. John Harrington

Dear Sir or Madam:

Pursuant to Rule 14a-8(j) of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended (the "Act"), enclosed herewith for filing are copies of the stockholder proposal and supporting statement (together, the "Proposal") submitted by Mr. John Harrington (the "Proponent") for inclusion in the proxy statement and form of proxy (together, the "2009 Proxy Materials") to be furnished to stockholders by Citigroup Inc. (the "Company") in connection with its annual meeting of stockholders to be held on or about April 21, 2009. The Proponent's address, as stated in the Proposal, is 1001 Second Street, Suite 325, Napa, California, 94559. The Proponent's telephone and fax numbers, as stated in the Proposal, are (707) 252-6166 and (707) 257-7923, respectively.

Enclosed for filing is a copy of a statement of explanation outlining the reasons the Company believes that it may exclude the Proposal from its 2009 Proxy Materials pursuant to Rule 14a-8(i)(1) under the Act because the Proposal is not a proper subject for action by shareholders under Delaware law (the jurisdiction in which the Company is organized); pursuant to Rule 14a-8(i)(2) under the Act because the Proposal would, if implemented, cause the Company to violate Delaware law; and pursuant to Rule 14a-8(i)(7) under the Act because the Proposal deals with a matter relating to the Company's ordinary business operations.

Rule 14a-8(i)(1) provides that a proposal may be excluded if the proposal "is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization."

Rule 14a-8(i)(2) provides that a proposal may be excluded if the proposal "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject."

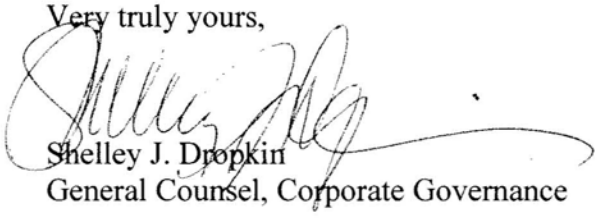
Rule 14a-8(i)(7) provides that a proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations."

By copy of this letter and the enclosed material, the Company is notifying the Proponent of its intention to exclude the Proposal from its 2009 Proxy Materials. The Company currently plans to file its definitive 2009 Proxy Materials with the Securities and Exchange Commission (the "Commission") on or about March 13, 2009.

The Company respectfully requests that the staff of the Division of Corporation Finance of the Commission confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2009 Proxy Materials.

Kindly acknowledge receipt of this letter and the enclosed material by return email. If you have any comments or questions concerning this matter, please contact me at (212) 793-7396.

Very truly yours,



Shelley J. Dropkin
General Counsel, Corporate Governance

STATEMENT OF INTENT TO EXCLUDE STOCKHOLDER PROPOSAL

Citigroup Inc., a Delaware corporation (the "Company"), intends to exclude the stockholder proposal and supporting statement (together the "Proposal," a copy of which, along with a cover letter to the Proposal, are annexed hereto as Exhibit A) submitted by Mr. John Harrington (the "Proponent") for inclusion in its proxy statement and form of proxy (together, the "2009 Proxy Materials") to be distributed to stockholders in connection with the Annual Meeting of Stockholders to be held on or about April 21, 2009.

The Proposal asks the stockholders of the Company to amend the By-laws of the Company (the "By-laws") to "establish[] a Board Committee on US Economic Security," (the "Committee") which "shall review whether [the] Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders." The Company believes that it may exclude the Proposal from the 2009 Proxy Materials pursuant to Rules 14a-8(i)(1), 14a-8(i)(2), and 14a-8(i)(7) of the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended (the "Act").

Rule 14a-8(i)(1) provides that a proposal may be excluded if the proposal "is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization."

Rule 14a-8(i)(2) provides that a proposal may be excluded if the proposal "would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject."

Rule 14a-8(i)(7) provides that a proposal may be excluded if it "deals with a matter relating to the company's ordinary business operations."

I. THE PROPOSAL MAY BE EXCLUDED BECAUSE IT WOULD, IF IMPLEMENTED, CAUSE THE COMPANY TO VIOLATE DELAWARE LAW.

The Proposal may be excluded from the 2009 Proxy Materials pursuant to Rule 14a-8(i)(2) because it would, if implemented, cause the Company to violate Delaware law. As more fully described in the opinion of the Delaware law firm of Morris, Nichols, Arsht & Tunnell LLP (the "Delaware Law Firm Opinion," annexed hereto as Exhibit B), the Proposal would, if implemented, violate Delaware law in two respects:

- First, the Proponent's by-law would empower the Chairman of the Board of Directors of the Company (the "Board") to appoint directors to the Proponent's Committee. This purported authorization to the Chairman is in direct violation of Section 141(c)(2) of the Delaware General Corporation Law (the "DGCL"), which permits only the Board or an authorized committee of the Board to appoint directors to a Board committee. *See* 8 *Del. C.* § 141(c)(2).
- Second, the Proponent's by-law seeks to force the Company directors to undertake the review of "US economic security" envisioned by the Proponent. The stockholders cannot force the Company directors to undertake a specific course of action with respect to Company management because only the directors are empowered to manage the business

and affairs of the Company. *See* 8 *Del. C.* § 141(a). Furthermore, the directors cannot be forced to undertake the review urged by the Proponent if the directors determine that the review would not advance the best interests of the Company and all of its stockholders. *Compare CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 239 (Del. 2008) (holding that a stockholder-proposed by-law that would have required the corporation to reimburse certain stockholders for their proxy expenses would violate Delaware law if adopted because it would "prevent the directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate").

For these reasons, which are explained in detail in the Delaware Law Firm Opinion, the Proposal violates the express provisions of the DGCL and well-settled principles of Delaware common law. Accordingly, the Company may exclude the Proposal pursuant to Rule 14a-8(i)(2). *See, e.g.*, *General Motors* (avail. April 19, 2007) (deciding not to recommend enforcement action regarding exclusion of a proposal under Rule 14a-8(i)(2) that sought to amend the company's by-laws to require each director to oversee, evaluate, and advise certain functional groups of the company's business); *MeadWestvaco Corporation* (avail. Feb. 27, 2005) (deciding not to recommend enforcement action regarding exclusion of a proposal under Rule 14a-8(i)(2) that recommended that the company adopt a by-law containing a per capita voting standard where Delaware counsel opined that such by-law would, if adopted, violate state law).[1]

II. THE PROPOSAL MAY BE EXCLUDED BECAUSE IT IS NOT A PROPER SUBJECT FOR ACTION BY STOCKHOLDERS UNDER DELAWARE LAW.

The Proposal may also be excluded pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by stockholders under Delaware law. As more fully described in the Delaware Law Firm Opinion, the Proposal is not a proper subject for stockholder action because stockholders only have the power to adopt by-laws that are not inconsistent with law. *See* 8 *Del. C.* § 109(b). The Delaware Supreme Court has determined that by-laws that facially violate a provision of the DGCL or mandate how the board should decide a specific business decision are not a proper subject for stockholder action. *See AFSCME*, 953 at 238-40. Accordingly, the Proposal is not a proper subject for stockholder action because (i) it violates the express provisions of Section 141(c)(2) of the DGCL by directing the Chairman of the Board to determine the membership of the Committee and (ii) it mandates how the directors should decide a specific decision by requiring a review of U.S. economic security.

The Company recognizes that, on occasion, the Staff will not concur with a company's decision to exclude a proposal pursuant to Rule 14a-8(i)(1) if a proposal that would otherwise require the directors to take certain action is revised in precatory terms that only

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[1] The Company recognizes that, in 2005 and 2001, the Staff denied Alaska Air Group, Inc. and Lucent Technologies Inc., respectively, no-action relief on proposals to adopt by-laws that counsel argued would violate Delaware law. *Alaska Air Group, Inc.*, (avail. Mar. 17, 2005); *Lucent Technologies Inc.* (avail. Nov. 6, 2001). The Company notes, however, that these no-action requests do not appear to have been supported by opinions from members of the Delaware bar. In contrast, the Company's request is supported by an opinion prepared by members of the Delaware bar who are licensed, and actively practice, in Delaware.

recommend that directors take certain actions. *See* Note to Rule 14a-8(i)(1). However, even if the Proponent were permitted to revise his Proposal to cast it in precatory terms (i.e., to merely "recommend" that the Board form the Committee envisioned by the Proposed by-law), the Proposal would nevertheless constitute an improper matter for stockholder action because the provision empowering the Chairman of the Board to appoint directors to the Committee would violate an express provision of the DGCL. *Compare Radiation Care, Inc.* (avail. Dec. 22, 1994) (permitting exclusion of a proposal that sought to amend the company's by-laws to, among other things, create a committee of stockholders that could expend corporate funds and noting that, even if the proposal could be revised in precatory form, it was nevertheless an improper subject for stockholder action because the proposal contained a provision of questionable validity under Delaware law that would have prevented the directors from amending the by-law). In other words, even in precatory format the Proposal would violate Delaware law because the stockholders cannot recommend that the directors adopt a provision that violates the DGCL.[2] Clearly, the Proposal may be excluded from the 2009 Proxy Materials pursuant to Rule 14a-8(i)(1).

III. THE PROPOSAL MAY BE EXCLUDED BECAUSE IT RELATES TO THE COMPANY'S ORDINARY BUSINESS OPERATIONS.

The Proposal may be excluded from the 2009 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations. The Staff has explained that the general underlying policy of Rule 14a-8(i)(7) is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." SEC Release 34-40,018 (May 21, 1998). The first central consideration upon which that policy rests is that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." *Id.* The second central consideration underlying the exclusion for matters related to the Company's ordinary business operations is "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* The second consideration comes into play when a proposal involves "methods for implementing complex policies." *Id.*

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[2] The Staff has repeatedly indicated that it will not recommend enforcement action if a company excludes a precatory proposal because the recommended action would violate state law. *See, e.g.*, *Pennzoil Corporation*, (avail. Mar. 22, 1993) (stating that the Staff would not recommend enforcement action against Pennzoil for excluding a precatory proposal, which proposal asked directors to adopt a by-law that could be amended only by the stockholders, under the predecessor provision to Rule 14a-8(i)(1) because under Delaware law "there is a substantial question as to whether . . . the directors may adopt a by-law provision that specifies that it may be amended only by shareholders"); *cf. AT&T Inc.* (avail. Feb. 7, 2006) (finding a basis for exclusion under Rule 14a-8(i)(2) of a proposal recommending that a board of directors adopt cumulative voting as a by-law or a long-term policy); *MeadWestvaco Corp.* (avail. Feb. 27, 2005) (finding a basis for exclusion under Rule 14a-8(i)(2) of a proposal recommending that the company adopt a by-law containing a per capita voting standard that, if adopted, would violate Delaware law).

The Staff has also made clear that even a proposal relating to a significant social policy issue may be excluded from a company's proxy materials if the "proposal and supporting statement focus on the company engaging in an internal assessment of the risks or liabilities that the company faces as a result of its operations that may adversely affect" that social policy issue. Staff Legal Bulletin No. 14C (June 28, 2005).

Where, as here, a proposal requests that the Company prepare a report on or create a committee to review a particular issue, "the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under Rule 14a-8(c)(7)." SEC Release 34-20091 (Aug. 16, 1983).

As discussed below, the Proposal may be excluded as relating to the Company's ordinary business operations because the subject matter to be reviewed by the Committee relates to tasks fundamental to management's ability to run the Company on a day-to-day basis and the Proposal seeks to micro-manage the Company.

A. The Proposal Relates to Tasks Fundamental to Management's Ability to Run the Company on a Day-to-Day Basis, Particularly Management's Internal Assessment of the Risks It Faces As A Result of Its Operations That May Affect U.S. Economic Security.

The Proposal would create a Board Committee on U.S. economic security that would force the directors to review whether the Company's policies, beyond those required by law, are shaped to support U.S. economic security. Although framed as a review of the effect of the Company's policies on U.S. economic security, the Proposal involves a broad review of the Company's day-to-day business decisions with a particular focus on how those day-to-day decisions affect the U.S. economy and the Company. The supporting statement asserts that "there can be no doubt that [the Company's] financial integrity is interdependent with a strong and secure US economy." The Proponent inextricably ties U.S. economic security to the Company's risk management. The Proponent concedes this point in his supporting statement by essentially admitting that the Proposal strikes at the heart of the Board's authority to evaluate the risks inherent in the Company's business. The Proponent notes that the recent financial system weaknesses resulted from, among other things, "a general lack of management and board oversight" and suggests that the Proposal will "ensure that these recent events are not repeated." Although the Company does not agree with all the Proponent's assertions, the Company does agree with his insinuation that the Proposal, in essence, seeks an evaluation of the risks faced by the Company as a result of its operations that may affect the U.S. economy.

The Staff has consistently concurred with the exclusion of proposals that seek an assessment of the risk related to a company's policies. *See, e.g.*, *ONEOK, Inc.* (avail. Feb. 7, 2008) (permitting exclusion of a proposal requesting a report reviewed by a board committee on how the company is responding to rising regulatory, competitive, public pressure to significantly reduce carbon dioxide and other emissions from the company's operations); *ACE Ltd.* (avail. March 19, 2007) (permitting exclusion of a proposal requesting a report describing the company's strategy and action relative to climate change). In *Sunoco* (avail. Feb. 8, 2008), the Staff concurred that the company could exclude a proposal establishing a board committee on sustainability that would ensure the company's sustained viability and strive to enhance shareholder value because that proposal addressed the evaluation of risk, which is an ordinary business matter. The Proposal here is analogous in the sense that it seeks a review of the

Company's policies with respect to U.S. economic security, which the Proponent expressly ties to the sustainability of the Company. *See* Supporting Statement to the Proposal ("[T]here can be no doubt that our company's financial integrity is interdependent with a strong and secure US economy."). Moreover, in *Bank of America* (avail. Jan. 11, 2007), the Staff concurred that a proposal that closely resembles the Proposal here was excludable as relating to ordinary business matters. That proposal, which was also made by the Proponent, sought the appointment of a "Vice President for US Economy and Security" to "review whether management and Board policies, beyond those required by law, adequately defend and uphold the economy and security of the United States of America." The Staff concurred that the company could exclude that proposal because it related to the company's ordinary business operations. Likewise, this Proposal, which also pertains to the relationship between Company management and U.S. economic security, relates to the Company's ordinary business operations.

B. The Proposal Seeks to Micro-Manage the Company's Ordinary Business Operations.

Regardless of the Proponent's attempt to frame the Proposal as touching upon a significant social policy, its non-comprehensive list of items that may be included in the Committee's review of "'US Economic Security' impacted by bank policy" involves an attempt to micro-manage the Company's ordinary business operations. Among other items, the list includes day-to-day management issues such as security holdings and employment policies. In other words, even if in the broad sense, U.S. economic security is a social policy issue that transcends ordinary business operations, the Proposal does not transcend ordinary business operations because it specifically addresses day-to-day management items. *See, e.g.*, *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) (allowing the exclusion of a proposal requesting a report on child labor and noting "in particular that, although the proposal appears to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relates to ordinary business operations."). By directly addressing the day-to-day items included within the rubric of U.S. economic security, the Proposal is precisely the type of proposal that "prob[es] too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." SEC Release 34-40,018 (May 21, 1998).

The Company acknowledges that the Staff has found that certain proposals requiring reports arguably touching on specific day-to-day matters are not excludable as relating to ordinary business matters. *See, e.g.*, *ITT Corp.* (avail. Mar. 12, 2008) (proposal requesting report on foreign military sales with suggested items to be included was not excludable); *Bemis Co., Inc.* (avail. Feb. 26, 2007) (proposal requesting a report reviewing the compensation packages provided to senior executives, including certain specified considerations enumerated in the proposal was not excludable). The Company believes, however, that those proposals are distinguishable because the reports requested touched on day-to-day matters that were directly related to a narrowly-circumscribed social policy issue, such that the reports did not request an undue level of intricate detail and did not implicate a broad range of day-to-day management issues. *See* SEC Release 34-40,018 (May 21, 1998) (noting "some proposals may intrude unduly on a company's 'ordinary business' operations by virtue of the level of detail that they seek" and that determinations as to whether such proposals intrude on ordinary business matters "will be made on a case-by-case basis, taking into account factors such as the nature of the proposal and the circumstances of the company to which it is directed"); *see also Ford Motor Co.* (avail. Mar.

2, 2004) (proposal requesting a report on global warming was excludable because it addressed "the specific method of preparation and the specific information to be included in a highly detailed report"). The Company notes that the proposals requesting broad reviews by a board committee that the Staff has determined are not excludable under 14a-8(i)(7) often identify the high-level social policy issue and allow management the discretion to address which day-to-day business matters are implicated by that concern. *See, e.g.*, *Bank of America Corp.* (avail. Feb. 29, 2008) (proposal establishing a board committee on human rights and only suggesting a non-binding reference for the definition of human rights in the supporting statement was not excludable); *Yahoo! Inc.* (avail. April 16, 2007) (similar). In this way, such proposals address broad issues without pervading ordinary business operations.

In contrast, the Proposal seeks to micro-manage the Company by, among other things, requesting a review of the Company's policies that affect security holdings. As a diversified global financial services company, the Company's day-to-day operations include numerous actions and policies that affect the holdings of securities of companies located in the U.S. and other countries. The Proposal requests a review that includes the effect of the Company's policies on "levels of . . . foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US," and "the extent to which [the Company] holds securities of foreign companies." Thus, the Proposal directly implicates the detailed and complex day-to-day business decisions and policies involving the Company's extensive portfolio.

For the aforementioned reasons, securities are analogous to supplies or raw materials, and the Staff has consistently held that a proposal relating to one of these items is an ordinary business matter. *See, e.g.*, *Dean Foods Co.* (avail. Mar. 9, 2007) (proposal requesting a board committee review and report on the company's policies relating to the production and sourcing of organic dairy products was excludable because it addressed "customer relations and decisions relating to supplier relationships"); *Walgreen Co.* (avail. Oct. 13, 2006) (proposal requesting that the board publish a report on the raw materials in the company's cosmetics was excludable as relating to ordinary business operations). Likewise, the Proposal is analogous to proposals relating to particular products or services, which the Staff has repeatedly determined are excludable as addressing ordinary business matters. *See, e.g.*, *Family Dollar Stores, Inc.* (avail. Nov. 6, 2007) (proposal requesting a report evaluating Company policies and procedures for systematically minimizing customers' exposure to toxic substances and hazardous components in its marketed products, with a particular emphasis on products imported into the U.S., was excludable as relating to the "sale of particular products"); *PetSmart, Inc.* (avail. Apr. 14, 2006) (proposal requesting a report on whether the company will end all bird sales was excludable as relating to "the sale of particular goods"); *Marriott International, Inc.* (avail. Feb. 13, 2004) (proposal prohibiting the sale of sexually explicit material at Marriott hotels was excludable as relating to the sale and display of a particular product).

The Proposal also micro-manages the Company's employment decisions. The Proposal seeks a review of the impact of the Company's policies on "the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages . . . ." Thus, the Proposal seeks a review of the Company's ordinary business operations because every policy related to the Company's decision to hire, terminate, or determine the wages of its employees who happen to be U.S. citizens is implicated. The Staff has consistently determined that Proposals relating to the terms of employment, including hiring, termination, and determination

of employee wages may be excluded as relating to ordinary business decisions. *See, e.g.*, *Capital One Financial Corp.* (avail. Feb. 3, 2005) (proposal requesting a report on the elimination of jobs and the relocation of U.S.-based jobs to foreign countries excludable as relating to "management of the workforce"); *International Business Machines Corp.* (avail. Feb. 3, 2004) (proposal requesting that the company's board "establish a policy that employees will not lose their jobs as a result of IBM transferring work to lower wage countries" excludable as relating to "employment decisions and employee relations").

Regardless of whether the Proposal touches upon a significant social policy issue, the Proposal is excludable because it directly addresses and attempts to micro-manage the ordinary business operations discussed above. The Staff has consistently determined that proposals that relate to ordinary business operations may be excluded even if they address other issues that may not relate to ordinary business operations. *See Medallion Financial Corp.* (avail. May 11, 2004) (proposal that appeared to address "both extraordinary transactions and non-extraordinary transactions" was excludable as relating to the company's ordinary business operations); *General Electric Co.* (avail. Feb. 11, 2000) (proposal that addressed three distinct items was excludable because a "portion of the proposal relates to ordinary business operations (i.e., choice of accounting methods)").

CONCLUSION

For the foregoing reasons, the Company believes the Proposal may be excluded pursuant to Rules 14a-8(i)(1), 14a-8(i)(2), and 14a-8(i)(7), and respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its 2009 Proxy Materials.

2628870.7

Exhibit A

HARRINGTON
INVESTMENTS, INC.

October 30, 2008

Citibank
Vikram Pandit, CEO
399 Park Avenue
New York, NY 10043

Dear Mr. Pandit,

As a beneficial owner of Citigroup stock, I am submitting the enclosed shareholder resolution for inclusion in the 2009 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (the "Act"). I am the beneficial owner, as defined in Rule 13d-3 of the Act, of at least $2,000 in market value of Citigroup common stock. I have held these securities for more than one year as of the filing date and will continue to hold at least the requisite number of shares for a resolution through the shareholder's meeting. I have enclosed a copy of Proof of Ownership from Charles Schwab & Company. I or a representative will attend the shareholder's meeting to move the resolution as required.

I am concerned that our company is in need of oversight by a Board of Directors Committee on U.S. Economic Security in order to insure that our company's worldwide business operations do not negatively impact the domestic economy to the detriment of shareholders.

Sincerely,

John Harrington

jwu

encl.

1001 2ND STREET, SUITE 325 NAPA, CALIFORNIA 94559 707-252-6166 800-788-0154 FAX 707-257-7923
WWW.HARRINGTONINVESTMENTS.COM

Resolution to Create a Board Committee on US Economic Security

RESOLVED: To amend the corporate bylaws by inserting in Article VI of the Bylaws the following new section:

SECTION 2. Board Committee on US Economic Security. There is established a Board Committee on US Economic Security. The Board Committee shall review whether our Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders. The Board Committee may issue reports to the Board and the shareholders at reasonable expense and omitting confidential information on the impacts of bank policy on US Economic Security. For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies.

The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security. Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law. Notwithstanding the language of this section, the Board Committee on US Economic Security shall not incur any costs to the company except as authorized consistent with these bylaws.

Supporting Statement:

Our company has received Federal assistance under the Troubled Asset Relief Program of the US Treasury. In the opinion of the proponents, the financial system's weaknesses that precipitated this taxpayer effort to stabilize the US financial system was the result of years of irresponsible lending and business practices across the US economy, including speculative derivatives trading and a general lack of management and board oversight. While the US government has decided not to take voting shares in our company, the need for shareholders and the public to understand our company's role in long term US economic security is more evident than ever.

Following the dramatic recent government interventions, there can be no doubt that our company's financial integrity is interdependent with a strong and secure US economy. Proponents believe that the time has come for shareholders and members of the public to inquire further of our management and Board to ensure that these recent events are not repeated and that the investment by the US taxpayers brings reciprocal benefit to US economic security.

charles SCHWAB
INSTITUTIONAL

PO Box 52013, Phoenix, AZ 85072-2013

October 30. 2008

Citigroup
Vikram Pandit, CEO
399 Park Ave.
New York, NY 10043

RE: John C. Harrington
Citigroup Stock Ownership

To Whom It May Concern:

This letter is to verify that John C. Harrington has continuously held at least $2000 in market value of C stock for at least one year prior to October 30, 2008 (October 30, 2007 to present).

Sincerely,

Landen L Lunsway
Schwab Institutional
Charles Schwab & Co. Inc.

Cc. John Harrington

Shelley J. Dropkin
General Counsel
Corporate Governance

Citigroup Inc.
425 Park Avenue
2nd Floor
New York, NY 10022

T 212 793 7396
F 212 793 7600
dropkins@citi.com

VIA UPS

November 6, 2008

John Harrington
1001 2nd Street, Suite 325
Napa, CA 94559

Dear Mr. Harrington:

Citigroup Inc. acknowledges receipt of your stockholder proposal for submission to Citigroup's stockholders at the Annual Meeting in April 2009.

Sincerely,

Shelley J. Dropkin
General Counsel, Corporate Governance

Exhibit B

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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

302 658 9200
302 658 3989 FAX

December 19, 2008

Citigroup Inc.
425 Park Avenue
New York, NY 10022

Re: Stockholder Proposal Submitted By John Harrington

Ladies and Gentlemen:

This letter is in response to your request for our opinion with respect to certain matters involving a stockholder proposal (the "Proposal") submitted to Citigroup Inc., a Delaware corporation (the "Company"), by John Harrington (the "Proponent") for inclusion in the Company's proxy statement and form of proxy for its 2009 Annual Meeting of Stockholders. Specifically, you have asked our opinion whether the Proposal is a proper subject for action by stockholders under Delaware law and whether the Proposal, if adopted, would cause the Company to violate Delaware law.

I. Summary Of The Proposal And Our Opinion.

The Proposal calls upon the Company's stockholders to amend the By-laws of the Company (the "By-laws") to establish a "Board Committee on US Economic Security," which

we refer to herein as the "Committee."[1] The proposed by-law would force the directors serving on the Committee to review whether the Company's policies "beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders." The review envisioned by the Proponent would cover a wide range of issues, including "1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which [the Company] holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies." The proposed by-law would also empower the Chairman of the Board to appoint directors to the Committee.

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[1] In its entirety, the Proposal reads as follows:

> RESOLVED: To amend the corporate bylaws by inserting in Article VI of the Bylaws the following new section:
>
> SECTION 2. Board Committee on US Economic Security. There is established a Board Committee on US Economic Security. The Board Committee shall review whether our Company's policies, beyond those required by law, are shaped to support the US economic security, while meeting the Board's responsibilities to the shareholders. The Board Committee may issue reports to the Board and the shareholders at reasonable expense and omitting confidential information on the impacts of bank policy on US Economic Security. For purposes of this bylaw, "US Economic Security" impacted by bank policy may include, among other things 1) the long term health of the economy of the US, 2) the economic well-being of US citizens, as reflected in indicators such as levels of employment, wages, consumer installment debt and home ownership, 3) levels of domestic and foreign control, and holdings of securities and debt, of companies incorporated or headquartered in the US and 4) the extent to which our company holds securities of foreign companies or has employees or representatives holding positions on the boards of directors of foreign companies.
>
> The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security. Nothing herein shall restrict the power of the Board of Directors to manage the business and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law. Notwithstanding the language of this section, the Board Committee on US Economic Security shall not incur any costs to the company except as authorized consistent with these bylaws.

A supporting statement, not relevant to our opinion, accompanies the Proposal.

The proposed by-law appears to impose two directives on the Company. First, the by-law would empower the Chairman of the Board to appoint the Company directors who will serve on the Committee. Second, the by-law would force the directors serving on the Committee to devote their time and Company resources to review whether the Company's policies support the "security" of the overall U.S. economy. In our opinion, both of these directives are inconsistent with Delaware law. As we explain in Part II.A. herein, by authorizing the Chairman of the Board to appoint directors to the Committee, the proposed by-law contravenes Section 141(c)(2) of the Delaware General Corporation Law (the "DGCL"), which does not permit any one other than the Board (or in certain circumstances an authorized committee of the Board) to determine the membership of a Board committee. Furthermore, as we explain in Part II.B. herein, the proposed by-law would violate Delaware law because it purports to force the directors to perform a review of the impact of Company policies on the U.S. economy. Under Delaware law, only the Board (and not the stockholders) is vested with the power to manage the business and affairs of the Company. The proposed by-law seeks to usurp this managerial authority by forcing the directors to perform the desired review of Company policies and "US economic security," even if the directors determine that undertaking such a review will not advance the best interests of the Company and all of its stockholders.

For the foregoing reasons, and as explained in greater detail below, it is our opinion that the Proposal would cause the Company to violate Delaware law if the stockholders adopted it and that the Proposal is not a proper subject for stockholder action under Delaware law.

II. The Proposal, If Implemented, Would Cause The Company To Violate Delaware Law.

A. The Power To "Designate" Committees Cannot Be Delegated To The Chairman Of The Board.

The proposed by-law purports to empower the Chairman of the Board to appoint directors to the Committee. The by-law is therefore at odds with the applicable provisions of Section 141(c)(2) of the DGCL ("Section 141(c)(2)"), which governs committees of the Board and specifies that "The board of directors may designate 1 or more committees, each committee to consist of 1 or more directors." 8 *Del. C.* § 141(c)(2).[2] Under Section 141(c)(2), the power to

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[2] The formation and power of a committee of the board of directors of a Delaware corporation are governed by one of two regimes, which are set forth in Subsection (1) and Subsection (2) of Section 141(c) of the DGCL. Subsection (1) governs corporations incorporated before July 1, 1996 that have not elected to be governed by Subsection (2). Subsection (2) applies to all other corporations. Although incorporated before July 1, 1996, we understand that the Company has elected to be governed by Subsection (2) of Section 141(c).

"designate" committees (i.e., to select the directors who will serve on a committee)[3] cannot be delegated to any person or body other than another committee of the board of directors.[4] Because Section 141(c)(2) expressly permits the Board to delegate the power to determine committee membership only to other properly authorized committees of the board, this power cannot be delegated to any other person, including the Chairman of the Board.[5] The proposed by-law is therefore inconsistent with Section 141(c)(2) of the DGCL, and would be invalid if adopted by the stockholders. 8 *Del. C.* § 109(b) (specifying that the by-laws of a Delaware corporation cannot contain a provision "inconsistent with law").

Beyond contravening the express terms of Section 141(c)(2), allowing a single director to appoint the members of a board committee would undermine the implicit policy rationale of the statute. Section 141(c)(2)'s requirement that the members of a board committee be designated by the board of directors (or by a properly authorized committee of the board) is vital to the statutory scheme enabling the use of board committees because it bridges the gap between the use of board committees, which permits board action by select directors, and the general policy that, "to be valid, actions of a board must be taken at a meeting where all

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3 Although Section 141(c)(2) does not define what it means to "designate" a committee, a court construing this provision would accord the term its plain meaning. *See Sostre v. Swift*, 603 A.2d 809, 813 (Del. 1992). The plain meaning of "designate" is to select one or more persons to perform a specific duty, i.e., to serve on a committee of the board of directors. *See* Black's Law Dictionary, at 447 (6th ed. 1990) (defining the word "designate" to mean "to indicate, select, appoint, nominate, or set apart for a purpose or duty, as to designate an officer for a command. To mark out and make known; to point out; to name; indicate").

4 *See* 8 *Del. C.* § 141(c)(2). Under Section 141(c)(2), the board may authorize a committee to "exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation," except that the board cannot authorize a committee to adopt by-law amendments or to approve, adopt or recommend certain actions that must be submitted for stockholder approval. The broad language of Section 141(c)(2) permits the board to vest in a committee the power to form an entirely new committee and designate the members of such committee.

5 The Delaware courts have held that, when a statute empowers only certain persons to take action, that power cannot be delegated to other persons. *See, e.g., Grimes v. Alteon*, 804 A.2d 256, 263, 266 (Del. 2002) (holding that, because Section 157 of the DGCL requires the board to approve the terms of a right to buy stock, those terms could not be approved by the chief executive officer); *In re Staples Inc. S'holders Litig.*, 792 A.2d 934, 963-64 (Del. Ch. 2001) (holding that, because Section 213(a) of the DGCL requires the board to fix a record date for a meeting of stockholders, a record date could not be fixed by an officer of the corporation); *Field v. Carlisle*, 68 A.2d 817, 820 (Del. Ch. 1949) (holding that, because the predecessor provision to Section 152 of the DGCL requires the board to fix the consideration for the issuance of stock, the board could not delegate to an appraiser the power to determine such consideration).

members are afforded the opportunity to be present" and "participate fully in the deliberations." 1 DAVID A. DREXLER ET AL., DELAWARE CORPORATION LAW AND PRACTICE § 13.01[6], at 13-11 (2007).[6] By operation of Section 141(c)(2)'s requirements, the entire board has the opportunity to participate in establishing the board committee and selecting its members (or in selecting the members of a committee that, in turn, may appoint directors to other board committees). Enabling a single director to appoint the members of a board committee without providing an opportunity for input or participation by the remaining directors essentially substitutes the single director's decision for the entire board, thereby subverting the very mechanism that validates the use of board committees.

For the foregoing reasons, it is our opinion that the Proposal would, if implemented, violate Delaware law by allowing a single director to appoint the members of a board committee in contravention of Section 141(c)(2).[7] We note that the Proposal would violate Delaware law solely for the reasons set forth in this Part II.A. of our opinion and that the Company need not rely on Part II.B. of our opinion to determine that the Proposal is invalid as a matter of Delaware law. However, we also believe that the Proposal would violate Delaware law for the alternative reasons set forth in Part II.B. below.

B. A Stockholder Proposal May Not Force The Board To Devote Company Time And Resources To A Broad Study Of The U.S. Economy.

The by-law urged by the Proponents would require the Board to devote Company time and resources to studying the effect of the Company's policies on the "US economic

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6 *See also Liberis v. Europa Cruises Corp.*, 1996 WL 73567, at *6 (Del. Ch. Feb. 8, 1996), *aff'd*, 702 A.2d 926 (Del. 1997) (holding that "polling board members does not constitute a valid meeting or effective corporate action" and stating that any purported board action at a meeting for which less than all the board members received or waived notice would be void); *Moore Bus. Forms, Inc. v. Cordant Holdings Corp.*, 1998 WL 71836, at *7 (Del. Ch. Feb. 6, 1998) ("The principle that all directors have equal rights of access to board information and to participate fully in board proceedings is well established."); *see also* 8 *Del. C.* § 141(f) (providing that the only exception to the requirement that board action be taken at a meeting where all directors had the opportunity to participate fully is board action by *unanimous* consent of all directors).

7 We recognize that the part of the proposed by-law that would authorize the Chairman of the Board to appoint directors to the Committee also contains a provision specifying that such authorization is "consistent with . . . applicable law." *See* Proposal ("The Chairman of the Board of Directors is authorized consistent with these regulations and applicable law, to appoint the members of the Board Committee on US Economic Security."). This provision appears to assert, incorrectly, that such authorization complies with Delaware law. Even if this provision is intended to serve as a "savings" clause, i.e., to save or preserve the remaining provisions of the sentence in which that provision appears, such provision is ineffective because the entire sentence at issue violates Delaware law.

security." In our opinion, the stockholders would violate Delaware law by adopting the Proposal because the proposed by-law would improperly force Company directors to perform such a review. Under Delaware law, the Company may conduct such a review only if the Company directors, in accordance with their fiduciary duties, determine that such review will further the best interests of the Company and all of its stockholders. This determination must be made by the directors because Section 141(a) of the DGCL vests in the directors the power to manage the corporation.[8] Managerial power is vested in the directors because they owe fiduciary duties to act in the best interests of all of the stockholders of the corporation.[9] The stockholders cannot use their statutory power to adopt by-laws to make management decisions because they do not owe fiduciary duties to the other stockholders.[10] Accordingly, only the directors may exercise

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8 8 *Del. C.* § 141(a) ("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."); *see also Pogostin v. Rice*, 480 A.2d 619, 624 (Del. 1984) ("[T]he bedrock of the General Corporation Law of the State of Delaware is the rule that the business and affairs of a corporation are managed by and under the direction of its board.").

Similarly, Article SEVENTH of the Restated Certificate of Incorporation of the Company (the "Certificate") also specifies that "[t]he business and affairs of the [Company] shall be managed by or under the direction of a Board of Directors . . . ." Accordingly, the proposed by-law is also invalid because it is inconsistent with the provisions of the Certificate. *See* 8 *Del. C.* § 109(b) (specifying that the by-laws may not contain any provision inconsistent with the corporation's certificate of incorporation).

9 *See Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1292-93 (Del. 1998) (noting that directors owe fiduciary duties that are "concomitant" to their managerial authority under Section 141(a) of the DGCL); *Gilbert v. El Paso Company*, 575 A.2d 1131, 1148 (Del. 1990) (observing that any duty the directors owed to a specific group of stockholders "had to be considered in light of [the directors'] duty to the corporation and all of its shareholders").

10 *Bershad v. Curtiss-Wright Corp.*, 535 A.2d 840, 845 (Del. 1987) (noting that, except in limited circumstances, Delaware law does not impose fiduciary duties on stockholders and further noting that stockholders may make their decisions based on "personal profit" or even based on "whim or caprice").

We note that the Delaware courts sometimes use rhetoric evoking the "will of the stockholders" in a way that might suggest that the board must follow the wishes of a stockholder majority, even with respect to managerial decisions. *See UniSuper Ltd. v. News Corp.*, 2005 WL 3529317, at *6 (Del. Ch. Dec. 20, 2005) (comparing, in dicta, the director-stockholder relationship to that of agent and principal). These broad pronouncements about following stockholder wishes, however, should be properly understood to apply only to those actions for which the DGCL requires stockholder approval. *UniSuper Ltd. v. News Corp.*, 2006 WL 207505, at *3 (Del. Ch. Jan. 19, 2006) (revised Jan. 20, 2006) (clarifying its prior opinion to note that the agent-principal analogy was intended only to illustrate that the directors could not use their fiduciary

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this managerial power because only the directors owe fiduciary duties to the corporation and its stockholders.[11] As recently as this year, the Delaware Supreme Court reaffirmed these fundamental principles of Delaware corporation law in a case certified to the Court by the U.S. Securities and Exchange Commission, in which the Court stated that "[i]t is well-established Delaware law that a proper function of bylaws is not to mandate how the board should decide specific substantive business decisions, but rather, to define the process and procedures by which those decisions are made." *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227, 234-35 (Del. 2008).

The review of the U.S. economy that the Proponent would force the Company directors to perform is clearly a "substantive business decision" within the sole managerial prerogatives of the Board. Through his Proposal, the Proponent would force the directors to focus on the stability of the U.S. economy in reviewing Company policy, whereas the Board may determine either that no such review is necessary, or that such a review must take a broader focus to account for the global economy (as well as any other considerations the directors deem advisable) rather than simply the national economy. *Cf. Grimes v. Donald*, 1995 WL 54441, at *11 (Del. Ch. Jan. 11, 1995), *aff'd*, 673 A.2d 1207 (Del. 1996) ("Ultimately, it is the responsibility and duty of the elected board to determine corporate goals, to approve strategies and plans to achieve those goals and to monitor progress toward achieving them."). Furthermore, the Proponent's by-law would mandate an expenditure of Company funds for his proposed review. *See* Proposal ("Notwithstanding the language of this section, the Board Committee on US Economic Security shall not incur any costs to the company except as authorized consistent with these bylaws."). This facet of the by-law also violates Delaware law because only the directors may decide whether director time and Company resources should be

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duties as an excuse to refrain from putting a charter amendment to a stockholder vote where, the court assumed, the board had contractually obligated itself to submit the amendment to stockholders). Because the type of review of Company policies urged by the Proponent does not require stockholder approval under the DGCL, these broad pronouncements do not apply to the Proponent's by-law.

11 *See Spiegel v. Buntrock*, 571 A.2d 767, 772-73 (Del. 1990) ("A basic principle of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation. The exercise of this managerial power is tempered by fundamental fiduciary obligations owed by the directors to the corporation and its shareholders.") (quotation omitted); *TW Services, Inc. v. SWT Acquisition Corp.*, 1989 WL 20290, at *8 n.14 (Del. Ch. Mar. 2, 1989) ("[A] corporation is not a New England town meeting; directors, not shareholders, have responsibilities to manage the business and affairs of the corporation, subject however to a fiduciary obligation.").

devoted to the review of the U.S. economy urged by the Proponent.[12] The Proponent cannot force the directors to make such an expenditure by fiat of a by-law provision.[13] Finally, if the directors disagree with the Proponent's assumption that a review of the U.S. economy will benefit the Company stockholders, then the directors cannot undertake such a review consistent with their fiduciary duties. *See Revlon Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) ("A board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders.").

We note that the Proponent could have simply asked the stockholders to adopt a by-law vesting a board committee with the power to decide whether or not to conduct the review urged by the Proponent. Such a by-law would regulate merely the *process* by which the board

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12 Under Delaware law, it is the directors' duty to determine how the assets of a corporation will be deployed to manage the corporation's business and affairs. *See UIS, Inc. v. Walbro Corp.*, 1987 WL 18108 (Del. Ch. Oct. 6, 1987) at *2 (refusing to grant a temporary restraining order that would have prevented a corporation from expending corporate funds because the directors "are charged with deciding what is and what is not a prudent or attractive investment opportunity" for the company); *see also Hollinger Inc. v. Hollinger International, Inc.*, 858 A.2d 342, 387 (Del. Ch. 2004) (noting that even a controlling stockholder "must live with the informed . . . and good faith . . . business decisions" of the directors in deciding whether to sell company assets).

We note that the stockholders can require the expenditure of Company funds indirectly, if it is incidental to a proper exercise of stockholder authority, such as expenditures that result from a by-law that relates to the process by which board or stockholder decisions are made. *See AFSCME,* 953 A.2d at 235-37. For the reasons stated above, however, the Proponent's by-law does not relate to a decision-making process, but instead to a substantive decision to deploy Company resources for an extensive review of the Company's management policies.

13 We note that the By-laws include a provision recognizing the Board's power to manage the Company's business and affairs. *See* By-laws, Article IV, Section 1 ("The affairs, property and business of the Company shall be managed by or under the direction of a Board of Directors . . . . . In addition, to the powers and authorities expressly conferred upon the Board of Directors by these By-laws, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Company, but subject, nevertheless, to the provisions of the laws of the State of Delaware, of the Certificate of Incorporation and of these By-laws."). Although this same by-law provision states that the Board's authority is "subject" to the By-laws, the By-laws cannot limit the managerial power of the Board (or permit the stockholders to usurp that power) because such a by-law would be inconsistent with Delaware law, as explained above. Furthermore, such a by-law would be inconsistent with Article SEVENTH of the Certificate, which vests the Board with the exclusive power to manage the Company's business and affairs. *See* footnote 8, *supra.*

made its decision (i.e., through a board committee rather than by the entire board).[14] However, because the Proponent has fashioned his by-law in mandatory rather than precatory language, i.e., to leave the directors no decision-making authority and instead require that the Committee conduct a review of the U.S. economy, the by-law impermissibly usurps the managerial power of the Board. *AFSCME*, 953 A.2d at 234.[15] Worse, the by-law would require the directors to expend time and resources in favor of this review process even if the directors determine that such a review does not further the best interests of all stockholders and that such time and resources could be put to better use to engage in activities that enhance the value of the Company. For this reason, the stockholders would violate Delaware law by adopting the proposed by-law because it seeks to force the directors to engage in a course of action, even if they determine such action would violate their fiduciary duties. The Delaware Supreme Court reached exactly the same conclusion in analyzing a by-law analogous to the Proposal. In *CA, Inc. v. AFSCME Employees Pension Plan*, the Court held that a stockholder-proposed by-law that would have required the corporation to reimburse certain stockholders for their proxy expenses would violate Delaware law if adopted because it would "prevent the directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate." 953 A.2d at 239. Among other things, the Court concluded that the proposal violated Delaware law because the proposed by-law would have prevented the board from denying corporate expenditures for proxy contests that do not promote the interests of the corporation. *Id.* at 240. Similarly, the Proponent's by-law is invalid because it denies the Company directors their full power to exercise their fiduciary duties to refrain from undertaking the review urged by the Proponent if the directors determine that the review would not promote the Company's best interests.[16]

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[14] Under Section 141(c)(2), the by-laws may set forth the authority of a board committee. 8 *Del. C.* § 141(c)(2) (specifying that "[a]ny . . . [board] committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation" subject to certain exceptions). Although a committee of the board of directors can be established through a stockholder-adopted by-law, a committee cannot function without the assent of the directors because only the board (or an authorized board committee) can designate the committee members and only the directors serving on a committee possess the power (and owe concomitant fiduciary duties) to decide whether or not to exercise the authority granted to that committee in the by-laws.

[15] We note that, even if the Proponent had drafted the proposed by-law to merely empower the committee to determine whether to undertake a review of U.S. economic security, the Proposal would still violate Delaware law because the Proposal seeks to empower the Chairman of the Board to appoint directors to the Committee in violation of Section 141(c)(2).

[16] We note that our opinion is not affected by the provision in the Proposal stating that its terms will not restrict the Board's power to manage the Company. *See* Proposal ("Nothing herein shall restrict the power of the Board of Directors to manage the business

(Continued. . .)

For the foregoing reasons, it is our opinion that the Proposal would, if implemented, violate Delaware law.

III. The Proposal Is Not A Proper Subject For Stockholder Action.

Pursuant to Section 109(a) of the DGCL, the stockholders of the Company may adopt by-laws. 8 *Del. C.* § 109(a). The stockholders' power to adopt by-laws, however, is subject to the express limitation in Section 109(b) that the by-laws may not contain any provision "inconsistent with law or with the certificate of incorporation." 8 *Del. C.* § 109(b). Accordingly, the Delaware Supreme Court has noted that a proposed by-law is not a proper subject for stockholder action if, among other potential considerations, the by-law "facially violate[s]" a provision of the DGCL, *see AFSCME*, 953 A.2d at 238, or if the proposed by-law mandates "how the board should decide specific business decisions." *Id.* at 234-35. The Proponent's by-law is not a proper subject for stockholder action because it violates both of these principles. First, as explained in Part II.A. of this opinion, the Proponent's by-law is facially invalid because it violates the express terms of Section 141(c)(2). Second, the proposed by-law also purports to mandate the outcome of the directors' specific business decision whether to conduct the review of "US economic security" urged by the Proponent. Therefore, the Proposal is not a proper subject for stockholder action under Delaware law.

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and affairs of the company or its authority under the corporate articles of incorporation, bylaws, and applicable law."). The Proposal is intended to restrict the Board's managerial power by preventing it from refusing to conduct the review urged by the Proponent. Without this restriction, the proposed by-law would be meaningless. The stockholders cannot adopt an invalid by-law simply because it includes language that recognizes the invalidity of its terms.

IV. Conclusion.

Based on the foregoing, the Proposal would, if implemented, cause the Company to violate Delaware law and is not a proper subject for stockholder action under Delaware law because it: (1) would violate the provisions of the DGCL empowering only the Board, or a committee of the Board, to designate the directors who serve on a Board committee and (2) would violate the provisions of the DGCL that permit only the directors to determine whether or not to pursue a review of the effect of the Company's policies on "US economic security." Moreover, because the Proposal would require the Company to violate Delaware law, we believe that it is not a proper subject for stockholder action under Delaware law.

Very truly yours,

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Morris, Nichols, Arsht & Tunnell LLP