March 18, 2025

Via Electronic Mail: senatejudiciary@delaware.gov; Christella.StJuste@delaware.gov

Christella St. Juste
Legislative Assistant
Office of Senator Darius J. Brown
Chair, Senate Judiciary Committee
Delaware General Assembly
Dover, DE 19901

Re: Delaware Senate Bill 21

Dear Christella St. Juste:

We—the undersigned organizations representing investors and other allocators of capital—write to express our concern that Senate Bill 21 would harm the shareholder franchise in Delaware and perpetuate the very harm it seeks to avoid —the departure of Delaware-incorporated corporations for jurisdictions perceived to be more friendly to controlling stockholders.

Delaware is home to many of the world's greatest companies, including roughly two-thirds of the S&P 500. Delaware is the leading legal domicile in the United States because the Delaware General Corporate Law and Delaware's experienced and sophisticated judiciary have served to protect corporations and shareholders from disloyal conduct by officers, directors, and controlling stockholders, while respecting the business judgment of non-conflicted, well-meaning fiduciaries who manage and oversee companies.

We are primarily concerned that Senate Bill 21, in dismantling shareholder protections, would lead to a decrease in investment in Delaware-incorporated corporations. The bill's amendments to the Delaware General Corporate Law would upend the reasonable expectations of issuers, investors, and other allocators of capital. The Delaware General Corporate Law is characterized by the strength of judicial oversight, whereas the bill seemingly has as its express purpose the disempowerment of the Court of Chancery and Supreme Court—a key feature and reason why companies incorporate in Delaware. The bill would overturn decades of precedent and carve out avenues for the most conflicted transactions to proceed unchallenged.

Rather than provide shelter for existing and future Delaware incorporations, the bill would likely incentivize incorporation outside of Delaware to attract public capital as the expertise of the judiciary would be less relevant moving forward. In addition, large institutional investors—pension plans, university endowments, charitable foundations, and the pooled investment vehicles through which they invest—would likely be less willing to further allocate capital which would be put in peril by the lack of shareholder protections in Delaware.

Specifically, we are concerned with the following amendments to the Delaware General Corporate Law contained in the bill:

First, Senate Bill 21 would curtail protections for shareholders in the context of "conflicted controller" transactions—*i.e.*, where a controlling stockholder is its company's counterparty or has a competing

interest with the company. The bill would lower the default standard of review for conflicted controller transactions, allowing controlling stockholders to escape judicial review for transactions which, under current law, are required to be negotiated by truly independent fiduciaries and approved by independent and disinterested directors and shareholders.

Second, the bill further marginalizes shareholders by amending what it means to be "disinterested" for the above purposes. The bill would presume that a director is disinterested if the board merely deems such a director as independent or the director satisfies the standard for independence under any applicable stock exchange rule—a standard that is inadequate and falls far short of corporate governance best practices. The bill would, in turn, entrench presumptively disinterested directors against judicial review by requiring shareholders to plead "substantial and particularized facts" of a "material interest" or "material relationship", whereas, under current law, Delaware takes a facts-and-circumstances approach to director conflicts.

Third, the bill immunizes controlling stockholders from liability for duty of care violations. Controlling stockholders' duty of care, under current law, demands that controlling stockholders not harm the company or its minority shareholders through grossly negligent action in exercising its voting power to affirmatively change the status quo. The only explanation for the bill's exculpation of controlling stockholders' duty of care violations is the disenfranchisement of minority shareholders.

Fourth, the bill restricts shareholders' inspection rights to the "books and records" of companies (in other words, almost exclusively formal board documents), limits the period of time from which shareholders may inspect books and records, and heightens the standard for shareholders to request inspection. The right to information is fundamental to shareholders' exercise of their rights and, therefore, must not be abridged.

Accordingly, we urge you to not advance Senate Bill 21 to preserve Delaware's status as the leading legal domicile in the United States.

At a minimum, we urge you to adhere to a more deliberative process where amendments to the Delaware General Corporate Law can be considered on a reasonable timeline and public shareholders, who were not consulted on Senate Bill 21, have a fair opportunity to make their views known. The deliberative process would ensure a fair and balanced approach to the bill's significant amendments to the Delaware General Corporate Law.

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We appreciate the opportunity to present our views on Senate Bill 21. If you have any questions or comments, please do not hesitate to contact the undersigned.

Respectfully submitted,

Jillien Flores
Chief Advocacy Officer
Managed Funds Association

Respectfully submitted,

Jeffrey P. Mahoney
General Counsel
Council of Institutional Investors

cc: Lauren Lee, Legislative Aide, Office of Rep. Sean M. Lynn, Chair, House Judiciary Committee, Delaware General Assembly (Lauren.Lee@delaware.gov)