Michael R. McAlevey
Vice President and
Chief Corporate, Securities &
Finance Counsel

General Electric Company
3135 Easton Turnpike
Fairfield, Connecticut 06828

T: 203 373 2967
F: 203 373 3079
michael.mcalevey@ge.com

August 5, 2009

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

SUBJECT: Facilitating Shareholder Director Nominations – Release Nos. 33-9046; 34-60089; IC-28765; File No. S7-10-09

Dear Ms. Murphy:

The General Electric Company ("GE") appreciates this opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rules regarding shareholder director nominations described in Release Nos. 33-9046; 34-60089 and IC-28675 (collectively, the "Release"). GE has been incorporated in the State of New York since 1892, and we are one of the largest and most diversified technology, media, and financial services corporations in the world. GE is the only company listed in the Dow Jones Industrial Index today that was also included in the original index in 1896. With products and services ranging from aircraft engines and power generation, to financial services, medical imaging, and television programming, we serve customers in more than 100 countries and employ about 300,000 people worldwide. In 2008, GE had consolidated revenues of approximately $183 billion. With approximately 5 million shareowners and approximately 10.5 billion shares outstanding, GE is one of the most widely held stocks in the world.

We recognize the fundamental shareholder right under state law to nominate and elect directors to oversee the management of the corporation, and we appreciate the Commission's thorough consideration of the role of the federal proxy rules in connection with this right. We also appreciate the Commission's thoughtful proposals contained in the Release for further changes in this area. Having considered these proposals, we remain

unconvinced that a federal rule mandating a process for shareholders to nominate and solicit for directors using company proxy materials is necessary or advisable, as it would constrain rather than empower shareholder choice. We do, however, support the proposal to amend Rule 14a-8(i)(8) to remove the restrictions on allowing shareholders to propose matters that relate to the director election process. This approach would allow shareholders and issuers, through an iterative process, to reach accommodation on the optimal approach to proxy access, would enable shareholders to choose the system, if any, they find most appropriate for their individual company, and would avoid numerous workability and other issues raised by the proposed mandatory uniform federal Rule 14a-11.

I. Recent Changes.

Over the past several years, the Commission, self regulatory organizations ("SROs"), state legislatures, shareholders and the corporate issuer community have worked constructively to achieve a better balance among competing shareholder interests involved in the process for director nominations and elections. We believe that all of these recent legal and regulatory changes have significantly improved director accountability and strike a good balance by allowing shareholders interested in nominating directors to do so without requiring all shareholders to subsidize the cost of those nominations by using company proxy materials and processes. In addition to developments that have enhanced directors' accountability to shareholders, recent developments in law and regulation have appropriately focused on further empowering shareholders to influence director elections by making director elections more representative of the will of holders of a majority of a company's outstanding shares.

The most important recent developments in the director nomination and election process include the following:

- In 2003, the Commission approved SRO listing standards prescribing director independence standards.[1] Among other things, these rules identify certain relationships that automatically preclude a director from being treated as independent and require each listed company to have a majority of independent directors on its board; have the board make and disclose an affirmative determination on whether a director is independent; have non-management directors meet at regularly scheduled executive sessions; and have independent directors select the company's nominees for director.

- In 2003, the Commission adopted rules requiring a public company to disclose information about the company's policies and procedures for nominating directors and for shareholders to communicate directly with the board of directors.[2] Notably,

[1] Order Approving Proposed Rule Changes Relating to Corporate Governance, Release No. 34-48745, 68 Fed. Reg. 64,154 (Nov. 12, 2003).

[2] Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors, Release No. 33-8340, 68 Fed. Reg. 69,204 (Dec. 11, 2003).

these rules mandate disclosure regarding, among other things, whether the board's nominating committee considers nominees recommended by shareholders, procedures for the submission of such recommendations, and whether there are any differences in the manner in which shareholder-recommended nominees and company-recommended nominees are evaluated.

- In 2006, to further improve director independence, the Commission adopted enhanced disclosure rules covering transactions between a company and "related persons," including officers, directors, nominees and close family members of these individuals. These rules also require additional disclosure on the basis for determinations of director independence.[3]

- In 2007, the Commission adopted the e-proxy rules, which substantially reduced the printing and mailing costs for shareholders electing to engage in a proxy solicitation.[4]

- In 2008, in response to an inquiry by the Commission, the Delaware Supreme Court clarified that Delaware law permits shareholders to propose and adopt bylaws regulating the process of director elections.[5]

- In July of this year, the Commission approved a change to New York Stock Exchange Rule 452 that eliminates the ability of brokers to vote uninstructed shares on a discretionary basis in uncontested director elections.[6] This change will reduce the influence that uninstructed shares have in director elections and increase the influence of shareholders who affirmatively vote their shares.

- In July of this year, the Commission also proposed enhanced disclosure requirements about qualifications of directors and nominees.[7]

- Earlier this year, the Delaware General Corporation Law was amended to provide explicit statutory authority for shareholders and companies to adopt amendments to a company's bylaws to provide a process for shareholder-proposed nominees for director to be included in the company's proxy materials.[8] The American Bar

---

[3] Executive Compensation and Related Person Disclosure, Release No. 33-8732A, 71 Fed. Reg. 53,158 (Sept. 8, 2006).

[4] Shareholder Choice Regarding Proxy Materials, Release No. 34-56135, 72 Fed. Reg. 42,222 (Aug. 1, 2007).

[5] CA, Inc. v. AFSCME Employees Pension Plan, 953 A.2d 227 (Del. 2008).

[6] Order Approving Proposed Rule Change to Eliminate Broker Discretionary Voting for the Election of Directors, Release No. 34-60215, 74 Fed. Reg. 33,293 (July 10, 2009).

[7] Proxy Disclosure and Solicitation Enhancements, Release No. 33-9052 (July 10, 2009).

[8] Delaware General Corporation Law § 112.

Association's Committee on Corporate Laws recently proposed similar amendments to the Model Business Corporation Act.[9]

- Majority voting for the election of directors has become the prevailing election standard among large public companies. In the past few years, without regulatory mandates, most large public companies have adopted majority voting in uncontested director elections. As the Commission observes in the Release, nearly 70% of S&P 500 companies have adopted some form of majority voting.[10] Additionally, since 2006, a number of state legislatures have responded to the majority vote movement by passing laws that facilitate the adoption of forms of majority voting.[11] The American Bar Association's Committee on Corporate Laws also revised the Model Business Corporation Act to better accommodate majority voting in the election of directors.[12]

The combined effect of all of these new and proposed enhancements is to provide shareholders with better disclosure and voting processes to support their state law right to nominate and elect directors. Yet they stop short of introducing the types and level of risks to the director election and board governance process that are implicated by the proposed uniform federal Rule 14a-11. They also preserve and enhance the ability of shareholders to make choices on a company-by-company basis, instead of imposing a mandatory rule on all companies regardless of the wishes of the majority of the company's shareholders.

The wisdom of a proxy access regime has been and continues to be subject to substantial debate. Facilitating an increased number of proxy contests raises the risks of encouraging more short-term decision making by directors who may feel pressure to avoid being targeted in annual contested elections; distracting boards and management from the management and oversight of the company; creating incentives for shareholders with special agendas to abuse the director election process to achieve narrow objectives not shared by all shareholders; and subjecting companies to the distraction and significant expense of a contested election regardless of whether the shareholder nominees are ultimately supported by other shareholders.

Moreover, we question whether, as the Commission claims, proxy access is needed to respond to the current financial crisis. We are unaware of any evidence that the current

---

[9] Press Release, American Bar Association, Corporate Laws Committee Takes Steps to Provide for Shareholder Access to the Nomination Process (June 29, 2009).

[10] Facilitating Shareholder Director Nominations, Release No. 33-9046, 74 Fed. Reg. 29,024, 29,029 n.69 (June 18, 2009) (citing a December 2008 report by the Corporate Library).

[11] For example, Delaware, New York, California, Virginia, Ohio, Washington, North Dakota and Utah have all amended their corporate laws to facilitate the adoption of majority voting in some manner.

[12] *See* Model Business Corporation Act, §§ 8.07, 10.22, reprinted in 61 THE BUSINESS LAWYER 1427 (2006).

financial crisis could have been avoided by the implementation of proxy access.[13] At the same time, we recognize that some form of proxy access is supported by certain institutional shareholders and shareholder advisory groups. In light of these competing views and concerns, we believe that the best approach is to allow the debate to play out at the company level, as majority voting did, with each company and its shareholders deciding on whether to implement a proxy access regime and, if so, the specific contours of that regime. At a minimum, the Commission should allow practice and experience to develop further before implementing a change as significant and potentially disruptive as mandatory proxy access.

II. We support the proposed amendment to Rule 14a-8(i)(8)

We do not believe that a mandatory, federal rule granting shareholders access to the proxy statement is necessary or advisable. We therefore urge the Commission not to implement proposed Rule 14a-11. Instead, we encourage the Commission to adopt an amendment to Rule 14a-8(i)(8) to allow shareholders to propose amendments to a company's governing documents to permit access so long as it is expressly allowed under applicable state law.

The principal advantage of amending the existing language of Rule 14a-8(i)(8) over the Rule 14a-11 proposal is its flexibility. The Rule 14a-8 proposal would allow shareholders and issuers, through private ordering, to develop over time a process for proxy access that best takes into account the circumstances of a particular company. Although the concept of proxy access has been debated for years in corporate governance circles and in the context of the Commission's previous proposals[14], the detailed mechanics of the operation of a federal rule like the one set forth in the Release have not. The Commission, therefore, runs the risk, despite its best efforts, of designing a rule that fails to take into account the differences among companies in terms of their capital structures, board structures and share ownership profiles. In addition, the Commission may altogether fail to address important issues applicable to all companies. The risk with moving forward in such a complicated area with a uniform federal rule is further compounded by the rule's preemptive effect. That is to say, legal questions will arise as to whether even minor changes to make the operation of the rule more effective for a particular company would be permitted.

Recent experience has shown that important changes in corporate governance can occur through the shareholder proposal process under Rule 14a-8. For example, the recent experience with majority voting in uncontested director elections shows that corporations

[13] *See* Internal Contradictions in the SEC's Proposed Proxy Access Rules, Rock Center for Corporate Governance, Working Paper No. 60, by Joseph A. Grundfest, Stanford Law School and The Rock Center for Corporate Governance, Footnote 41.

[14] *See* Security Holder Director Nominations, Release No. 34-48626 (October 14, 2003); Shareholder Proposals, Release No. 34-56160 (July 27, 2007); Shareholder Proposals Relating to the Election of Directors, Release No. 34-56161 (July 27, 2007); and Shareholder Proposals Relating to the Election of Directors, Release No. 34-56914 (December 6, 2007).

will adjust their governance processes based upon the level of support that proposals receive from their shareholders. Similarly, the percentage of S&P 500 companies with staggered boards has declined from 61 percent in 1999 to 34 percent at the end of 2008, in part due to 14a-8 shareholder proposals requesting companies to de-stagger their boards.[15] Shareholders should be permitted to vote on whether and how proxy access should be implemented at their companies. Companies will incur meaningful additional costs to establish processes to manage the proxy access process, and the cost of those processes will be borne by all shareholders. Shareholders should decide whether the benefits of proxy access exceed the burden of this subsidy or whether the eligibility requirements need to be calibrated to better balance the benefits and burdens.

Another advantage to the Rule 14a-8 proposal is its regulatory simplicity. The Rule 14a-8 proposal allows the Commission to avoid reaching a legal judgment on whether it has the authority to adopt a federal proxy access rule, or, if not, seeking the authority from Congress. The Rule 14a-8 proposal builds upon the existing right of shareholders to nominate directors under state law. As the Commission observed in the Release, "We are not aware of any law in any state or in the District of Columbia that prohibits shareholders from nominating directors."[16] Moreover, recent amendments to the Delaware General Corporation Law[17] and anticipated amendments to the Model Business Corporation Act will remove residual doubt and expressly enable shareholders to amend a company's governing documents to create a process for shareholders to use the company's proxy materials to nominate and solicit for directors.

The Rule 14a-8 proposal also avoids having to create a separate regulatory regime for federal proxy access. Shareholders and issuers are already familiar with the timing and substantive requirements of the shareholder proposal process, of which the Rule 14a-8(i)(8) proxy access proposals would become a part. The staff of the Commission would have to reinforce its existing resources to accommodate the potential increase in access proposals, but, unlike the Rule 14a-11 proposal, the staff would not have to create new and different substantive and procedural requirements. In short, the Rule 14a-8 approach will be easier to administer for the staff of the Commission.

Finally, as a drafting matter, the Rule 14a-8 approach involves a relatively simple amendment to Rule 14a-8(i)(8) to remove the director election exclusion. This is vastly less complicated than trying to construct a one-size-fits-all mandatory federal rule, like proposed Rule 14a-11, which prescribes the eligibility and substantive requirements for proxy access.[18]

---

[15] Classified Boards Year Over Year, www.SharkRepellent.net (from 302 at year-end 1999 to 172 at year-end 2008).

[16] Facilitating Shareholder Director Nominations, Release No. 33-9046, 74 Fed. Reg. 29,024, 29,031 n.99 (June 18, 2009).

[17] *See, e.g.*, Delaware General Corporation Law §§ 112 and 113.

[18] We support the substance of the 14a-8 amendment, but the wording of the Rule 14a-8 amendment may be problematic. We believe that the best means to accomplish the Commission's objective is to retain the existing

Naturally, the Commission will need to make other changes to Section 13 and 16 rules and other proxy rules in order to facilitate private ordering through proxy access bylaws.[19]

III. Proposed Rule 14a-11 raises serious workability and other issues

The Commission's proposed Rule 14a-11 poses numerous workability issues that will take time to address. If companies and shareholders were permitted to tailor their proxy access bylaws and disclosures through private ordering, they could avoid many of these issues. For example, while proposed Rule 14a-11 addresses independence considerations under national securities exchange listing rules, there are a number of other potential legal standards applicable to any potential director nominee that are not covered by the proposed Rule 14a-11 disclosure requirements. For example, companies are required to conduct a comprehensive analysis of potential competitive concerns prior to nominating a director for election. Under Section 8 of the Clayton Act,[20] directors are prohibited from serving as a director or officer of two competing companies unless they meet certain *de minimis* safe harbors. In order to determine whether a potential director meets the safe harbor, management conducts an antitrust analysis that involves a detailed review of potential competitive overlaps between GE and the company of which the potential nominee is a director of officer. This process involves the completion of questionnaires by the potential director, gathering data on revenues from the competing businesses, quantifying any potential revenue overlap areas, working with company counsel of each of the businesses with which the potential director nominee is associated to gather corresponding information for each of those businesses and aggregating and compiling the information for analysis by antitrust counsel. This process often takes four to eight weeks to complete for each director candidate.

In addition, there are other areas where companies are required to make certifications regarding its directors, which require similar company-specific analyses. For example, media companies are required under Federal Communication Commission rules to analyze interests that potential directors may have in television, cable networks and broadcast stations.[21] In certain cases, this may require engaging outside counsel to review specific questions raised through the information gathering process. Other areas include, for example:

- US government procurement regulations[22];

---

language of Rule 14a-8(i)(8), substituting an express confirmation that the rule does not exclude access proposals in place of the language that was added in December 2007.

[19] Other rules promulgated under the Securities Exchange Act of 1934 that may need to be amended include Rule 13d-1, Rule 13d-5, Rule 14a-9, the addition of a rule similar to proposed Rule 14a-19, and Rule 16a-1.

[20] Clayton Antitrust Act of 1914, 15 U.S.C. §19.

[21] GE is subject to Federal Communications Commission rules due to its ownership of NBC Universal.

- Department of Defense facility security clearance procedures[23];
- Department of State export licensing certification requirements[24];
- Bank holding company laws[25]; and
- Financial institution interlocks[26] (e.g., compliance with Depository Institution Management Interlocks Act).

These regulatory compliance reviews are time-consuming undertakings that do not fit within the timeframe contemplated under the Commission's proposed Rule 14a-11. In order to allow for an appropriate regulatory review to avoid potential violations of law, each company should be allowed to craft specific timing, disclosure and certification requirements that take into consideration the legal requirements applicable to that company and its board.

There are also a number of other issues that a well-crafted proxy access bylaw would address that proposed Rule 14a-11 does not. These include, but are not limited to, the following:

- Disclosure of a proponent's total position in the company's stock, rather than just long positions. Disclosure should also be required of any arrangement that affects the proponent's voting or economic rights. Given the possibility of the de-coupling of economic interests from voting rights, other shareholders need to be aware of this information about the proponent to have a clear and accurate understanding of the proponent's interest in the company;
- Director eligibility standards such as minimum and maximum age for board membership and limits on "over-boarding";
- Governance and confidentiality policies, such as maintaining confidentiality of material non-public information;
- Possible board or nominating committee endorsement of a proxy access nominee as a member of the board's slate;
- Withdrawal of a proxy access nominee and replacement by other proxy access nominees; and
- Changes in circumstances after the company's proxy material is mailed, such as disqualification of the proxy access nominee.

---

[22] As a seller of goods and services to the US Government, GE is subject to the US Government procurement regulations.

[23] GE is subject to Department of Defense facility security clearance procedures.

[24] GE is subject to Department of State export licensing certification requirements because it exports certain defense-related products.

[25] Bank holding company laws apply to GE and its subsidiaries, General Electric Capital Services, Inc. and General Electric Capital Corporation, because they are savings and loan holding companies.

[26] GE is subject to the Depository Institution Management Interlocks Act through its subsidiary GE Money Bank, which is chartered as a federal savings bank.

As proposed, Rule 14a-11 would mandate, for large accelerated filers, a minimum eligibility requirement that a nominating shareholder or group beneficially own an aggregate of one percent of the company's shares for at least one year prior to nominating a director for election to the company's board. We do not believe that the proposed threshold is appropriate given the fact that shareholders are permitted to aggregate their shareholdings to meet the ownership eligibility threshold. Since shareholder access nominations will require substantial attention and resources of a company, including its in-house legal and investor relations staff, outside securities and state-law counsel, senior management and the board of directors, the minimum threshold should be set at a level that ensures that the nominating shareholder or group has a substantial interest in the company. Each company should be permitted to work with its shareholders to determine the appropriate threshold of ownership for proxy access. The right threshold will vary from company to company based not only on the market capitalization of the company but also the concentration and composition of the company's shareholder base.

We are also concerned that giving shareholders the right to nominate directors to fill up to 25% of the seats a company's board will impose a significant burden on a company. For example, for a board of GE's size, with 16 directors, this would mean that in any given year, the GE Board would need to manage a process for up to four potential proxy access nominees. This would cause a significant distraction for both management and the Board and would reduce the time that the Board would otherwise spend on the long-term strategy of the company.

We are also concerned that the Commission's proposal to allow the earliest nominations to prevail would promote a race to the corporate secretary's mailbox. It would seem to be preferable to allow for later, but still timely, nominations by larger shareholders or groups.

In summary, we do not believe that a mandatory federal "proxy access" system is necessary or advisable. We urge the Commission to refrain from adopting proposed Rule 14a-11, which as discussed above, poses numerous workability issues. Instead, we support amending Rule 14a-8(i)(8) to allow for a private ordering approach to proxy access. This will encourage dialogue among companies and their shareholders and will allow practice and experience to guide companies in developing the approach that is best suited to their own particular circumstances.

We appreciate the opportunity to comment on these important proposals.

Sincerely,

Michael R. McAlevey

cc: Hon. Mary L. Schapiro, Chairman
Hon. Luis A. Aguilar, Commissioner
Hon. Kathleen L. Casey, Commissioner
Hon. Troy A. Paredes, Commissioner
Hon. Elisse B. Walter, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance

Jeffrey R. Immelt
Brackett B. Denniston III
GE Nominating and Corporate Governance Committee:
Rochelle B. Lazarus, Chairman
Susan Hockfield
Andrea Jung
A.G. Lafley
Ralph S. Larsen
Douglas A. Warner III