

**Thomas F. Larkins**  
Vice President  
Corporate Secretary and  
Deputy General Counsel

Honeywell  
101 Columbia Road  
Morristown, NJ 07962-2245  
973-455-5208  
973-455-4413 Fax  
tom.larkins@honeywell.com

August 10, 2009

Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549  
Attention: Ms. Elizabeth M. Murphy, Secretary  
Via Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: Facilitating Shareholder Director Nominations, Release Nos. 33-9046;  
34-60089; IC-28765; File No. S7-10-09 (June 10, 2009)

Dear Ms. Murphy:

Honeywell appreciates the opportunity to comment on the above-referenced release on facilitating shareholder director nominations (the "Access Proposal") issued by the Securities and Exchange Commission (the "Commission" or "SEC"). Honeywell is a Fortune 100 diversified technology and manufacturing company, serving customers worldwide with aerospace products and services, control, sensing, security and life safety technologies for buildings, homes and industry, turbochargers and automotive products, and specialty materials and process technologies. We have approximately 123,000 employees worldwide. Honeywell is incorporated in Delaware and has over 752 million outstanding shares.

For the reasons set forth below, we have significant doubts as to the need for the amendments to Rule 14a-11 set forth in the Access Proposal, as well as significant concerns regarding the consequences and issues that would arise from these amendments in their proposed form. We support the amendment of Rule 14a-8(i)(8) to allow shareholder proposals regarding proxy access as it would allow determination of the appropriate director election framework on an individual company basis, taking into account corporate governance reforms adopted to date and the provisions of applicable state law.

**A. We do not support adoption of a mandated and prescriptive proxy access system.**

**1. *Companies have moved to adopt corporate governance reforms without prescriptive federal legislation or regulation.***

- Honeywell has taken numerous actions to promote effective corporate governance and accountability to shareholders, including declassifying the Board and electing all directors annually, amending our by-laws to provide for majority voting in uncontested director elections, shareholder approval of poison pills and the right of shareholders to call special meetings, and eliminating supermajority voting provisions in our governing documents. Nine of the ten members of Honeywell's Board are independent directors.

- Several of these practices have gained widespread adoption at large public companies, most notably those pertaining to the election of directors – majority voting and annual election of all directors. These actions reflect the efforts of companies and their boards to ensure effective corporate governance and accountability to shareholders and run contrary to the notion implicit in the Access Proposal that boards will only take significant action where a practice is mandated and the rules governing it are prescribed.

**2. State legislation will facilitate the adoption of proxy access in a manner that promotes shareholder democracy and avoids the dangers inherent in a “one size fits all” approach.**

- Section 112 of the Delaware General Corporation Law (“DGCL”), which became effective on August 1, 2009, **permits, but does not require** Delaware corporations to adopt by-laws that provide for the inclusion of shareholder nominees for election as directors in a corporation’s proxy materials. Such by-laws may be adopted by either the board of directors or the shareholders, and may establish prerequisites for inclusion of shareholder nominees, including (i) minimum levels or duration of share ownership by the nominating shareholder, (ii) required disclosure regarding the nominee and/or nominating shareholder, and (iii) setting a maximum number of shareholder nominees. Consistent with other matters relating to the election of directors, this “opt-in” approach allows the Board and the shareholders to determine the overall electoral framework and parameters best suited to the corporation’s particular needs and circumstances. The Access Proposal, on the other hand, mandates proxy access, prescribes parameters which can be made less, but not more, restrictive, and offers no ability for shareholders to “opt-out” of the required electoral framework. It is extremely difficult to reconcile how shareholder democracy is best served by a rule that is not subject to modification or elimination by shareholder vote.
- The cost of disseminating proxy materials and soliciting proxies for the election of shareholder nominees has been a driver of prior proposals regarding proxy access. This issue has been addressed by both the SEC through its e-proxy rules and state legislation, such as new Section 113 of the DGCL which permits the adoption of by-laws requiring the reimbursement of proxy solicitation expenses incurred by a shareholder.

**3. A “one size fits all” approach is not warranted and would have serious consequences.**

- At the start of the Access Proposal (p. 7), the Commission states that it is revisiting proxy access “[i]n light of the current economic crisis” which “has led to concerns about the accountability and responsiveness of **some** (emphasis added) companies and boards of directors to the interests of

shareholders.” While the premise is raised, there is no further discussion as to whether a casual link actually exists or as to whether a prescriptive proxy access right would have prevented or mitigated the economic crisis. Even if one assumes the validity of the premise, it does not warrant requiring a uniform, inflexible approach at all public companies, regardless of their individual risk profile, responsiveness to shareholders, and governance practices.

- The widespread adoption of declassified boards and majority voting in the election of directors have served to promote the accountability of directors to shareholders. The Access Proposal, however, is not targeted at companies that have not adopted these reforms or that have demonstrated other significant corporate governance concerns; rather, it would apply to all public companies regardless of shareholder sentiment as to the need for or appropriate scope of proxy access at those companies.
- A board of directors must be able to represent the long-term interests of a company and its shareholders. The potential for annual contested elections could wind up indirectly encouraging directors to focus on the achievement of short-term objectives over long-term strategic considerations.
- The proposed ownership thresholds for submitting director nominees are low and, consequently, even companies that are performing well could face annual election contests, which would be distracting and costly and could dissuade qualified individuals from serving as corporate directors.
- Each director has a fiduciary duty to represent all shareholders. Shareholder nominees may feel obligated to pursue the financial, political or social agenda of the nominating shareholder(s). In addition to the potential conflict of interest with a director’s fiduciary duty, the election of shareholder nominees with narrow special interests could lead to divisive boards that have difficulty functioning as a team.

**B. The amendment of Rule 14a-8(i)(8), without the adoption of Rule 14a-11, would enable the determination of the electoral process framework and parameters best suited to the needs of each company.**

**1. *Permitting proxy access shareholder proposals without mandating a proxy access system would achieve several objectives.***

- Acting only to permit proxy access shareholder proposals would (i) be consistent with the Commission’s objective of removing impediments to shareholder use of state law rights (e.g., would allow shareholders to submit proposals pursuant to DGCL Section 112 discussed above), (ii) continue the long-established tradition of addressing corporate governance at the state level through private ordering by shareholders,

boards and companies, (iii) eliminate the need for debate over, or additional legislation to provide, the Commission's authority to enact a federal proxy access right, (iv) provide the flexibility for boards and shareholders to determine the parameters (e.g., eligibility and disclosure requirements, ownership thresholds, etc.) of proxy access best suited for their particular company, and (v) remove the need for the Commission to establish a separate process to resolve disputes about proxy access eligibility and rule interpretation, and to address concerns about the appropriateness of an informal no-action letter process and the adequacy of the Commission's resources to address these disputes adequately and in a timely manner.

**2. Any amendment of Rule 14a-8 (i)(8) to remove the director election exclusion should set higher minimum ownerships thresholds and holding periods than that required for other shareholder proposals (the thresholds for which are also long overdue for review and updating).**

- Logically, these ownership thresholds and holding periods, at a minimum, should be in line with those that the Commission proposed as being appropriate to be able to exercise the proxy access right (or higher for reasons discussed below).

**C. In its current form, Proposed Rule 14a-11 raises significant issues regarding the appropriateness of the basic parameters for proxy access eligibility and the ability to effectively implement proxy access as set forth in the Access Proposal.**

**1. Basic parameters**

- Ownership Threshold. We do not believe the ownership thresholds set forth in the Access Proposal are appropriate, especially in light of the ability of multiple shareholders to aggregate their holdings to meet these thresholds. Proposed Rule 14a-11 would not allow boards or shareholders to establish a higher minimum ownership requirement, such as 5% for individual shareholders of a large accelerated filer and 10% for a group.
- Holding Period. While acknowledging in the Access Proposal (p. 51) that the two-year minimum holding period proposed by the Commission in 2003 was supported by "the majority of commenters that addressed the topic," the Commission nevertheless is proposing the adoption of a one-year minimum holding period, with no ability of a company's board or shareholders to lengthen the duration of the holding period. Similarly, the Access Proposal calls for the nominating shareholder(s) to certify that the requisite level of ownership will be maintained through the date of the annual meeting, but does not allow a company's board or shareholders to require that such ownership interest be held at least through the initial term of the nominee's board service.

- **Beneficial Ownership.** The term “beneficial ownership” is not defined in the Access Proposal and, thus, it is unclear whether derivative positions would be considered for purposes of determining whether the minimum ownership threshold has been met. Given that the apparent purpose of the Access Proposal is to provide proxy access to long-term investors, we believe that only continuous net long conventional ownership of “physical” securities should count toward satisfaction of minimum ownership and holding period requirements. Moreover, we also believe that nominating shareholders should be required to disclose their total positions in the company’s stock, including derivative securities, as well as any arrangements that would affect or de-couple the shareholder’s voting and economic rights. Many companies, including Honeywell, have incorporated these disclosure requirements in their advance notice by-laws in order to ensure a clear understanding of the nature of a nominating shareholder’s interest in the company.
- **Exclusions/Triggers.** If the Commission determines to proceed with a prescriptive federal proxy access rule, it should consider excluding companies who have already adopted reforms that promote director accountability (e.g., declassified Boards, majority voting in the election of directors) or address the cost of soliciting proxies (adoption of a proxy reimbursement by-law), from the scope of that mandate, absent the occurrence of a specific triggering event, such as the Board not accepting the resignation of a director who received less than a majority of the votes cast.
- **Number of Shareholder Nominees.** The Access Proposal limits the number of shareholder nominees to a percentage of the authorized Board seats. The vetting of multiple nominees in a single year will be burdensome to companies and the concurrent addition of multiple new directors, who may not have experience or background regarding issues relevant to the industries or regions in which a company operates, could prove to be disruptive. We suggest either limiting the number of nominees in a single year to one or lowering the percentage limitation from 25% to 10%.
- **Priority Among Nominees.** In the case of multiple proxy access nominees, we believe that inclusion in the company’s proxy materials should be based on share ownership (with an individual shareholder having priority over a group aggregating their holdings) or duration of period in which the nominating shareholder has held shares in excess of the minimum ownership threshold, rather than priority being accorded to the first eligible nominees submitted as set forth in the Access Proposal.
- **Relationship between Nominating Shareholder and Director Nominee.** In order to guard against the disruptive impact of directors aligned with special interests or pursuing single issue agendas, we support prohibiting the nominating shareholder from having any affiliation with any of its proxy access nominees.

## **2. Implementation Issues**

- **Independence Standards/Other Compliance Requirements.** In order to ensure that a company will be able to comply with legal and listing requirements applicable to a board and its committees and corporate governance guidelines adopted by the company, proxy access nominees should be required to meet the qualification and independence standards set forth by the company in its proxy materials or corporate governance guidelines, as well as disclose whether they are able to meet enhanced independence standards applicable to key Board committees. Companies also need sufficient time and information to confirm that election of a proxy access nominee will not trigger issues under laws and regulations related to the company's businesses, including those pertaining to antitrust (Clayton Act), government procurement, security clearance and export control. The time required to conduct the necessary due diligence to confirm satisfaction with these requirements should not be underestimated. It is unlikely that this could be completed, especially for multiple nominees, in the 14-day period provided in the Access Proposal for companies to notify nominating shareholders of objections to the eligibility of the nominees submitted. Moreover, the board's nominating committee will not be able to evaluate and make informed recommendations to the shareholders regarding the election and qualifications of shareholder nominees if they do not receive the same information regarding those nominees as would be required of other director candidates.
- **Changes in Circumstances.** The Access Proposal does not address what happens when there is a change in circumstance regarding the ability of a nominating shareholder and/or its nominee(s) to meet the applicable eligibility requirements either between the date of submission of a nominee and the annual meeting or subsequent to the election of a proxy access nominee to the Board. For example, it would be appropriate to require the withdrawal of a proxy access nominee's candidacy or his or her resignation from the Board if there is a change in the control intent of a nominating shareholder. We also believe that the Commission should clarify that the withdrawal or exclusion of a shareholder nomination after the submission deadline would not result in a substitute proxy access nominee as the timing provisions of the Access Proposal could not accommodate multiple successive review processes in a single proxy season.
- **Election Contests.** The Access Proposal would permit proxy access simultaneously with a traditional proxy election contest. This creates risk of shareholder confusion when confronted with concurrent contests and at least two different proxy cards, as well as the question of whether the proxy dissemination and vote collection system could cope with multiple contests. We also do not believe it would be appropriate to permit any form of cooperation between nominating shareholders for proxy access and traditional insurgents. Indeed, it would likely be best to preclude proxy

access when a traditional proxy contest occurs, or at least to allow boards and shareholders to make that determination.

- **Timing Conflicts.** The Access Proposal establishes a minimum notice period of 120 days before the date of the mailing of last year's proxy materials (150-160 days prior to the annual meeting). Most advance notice bylaws require a minimum notice of only 60-90 days prior to the annual meeting. The advance notice by-law timeframe is too short to accommodate the no-action dispute resolution system set forth in the Access Proposal, and providing a longer timeframe in advance notice by-laws could raise questions under state law.
- **Other Implementation Issues.** The Access Proposal should be revised to (i) permit companies to clearly distinguish between statements of the company and statements of a nominating shareholder, (ii) to eliminate the imposition of any liability standard on companies for information that it did not prepare and that it is required to include in its proxy materials, (iii) address the treatment of voting errors (over-votes and under-votes) arising from the use of a "universal" proxy card listing all nominees for director (which will be more than the number of open Board seats), a form of proxy that has never been used by U.S. public companies, (iv) permit a shareholder to vote for all company nominees as a group, (v) clarify that companies can require proxy access directors to hold all non-public information received in their capacity as directors in strict confidence, including from their nominating shareholders, and (vi) determine the future status of a proxy access nominee elected as a director (i.e., does he or she lose their status as an access director if re-nominated for a second term?).

#### **D. Conclusion**

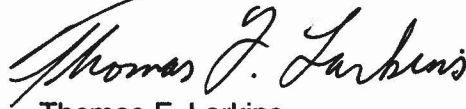
For the reasons stated above, we do not believe there is a need for a mandatory and prescriptive federal proxy access system. Furthermore, when proxy access is considered in the context of existing widespread electoral processes (annual election of directors, majority voting), the elimination of discretionary broker voting and the steadily increasing impact of proxy advisory services, the real potential for a "one size fits all" approach to significantly limit the effectiveness of boards in representing the long-term interests of all shareholders becomes readily apparent.

We respectfully urge the Commission to proceed only with the amendment of Rule 14a-8(i)(8), with the changes discussed above, to allow the determination of the electoral process framework and parameters best suited to the needs of each individual company in a manner consistent with state law. We also request that the Commission make any final rules

adopted effective for the 2011 proxy season so that companies have time to amend their by-laws and take other necessary preparatory actions. In particular, we believe that adoption of amendments to Rule 14a-8(i)(8) which would become effective prior to the Commission making a final determination as to whether to amend Rule 14a-11 would create great confusion and the potential for the adoption of actions which would have to be subsequently unwound.

Thank you for your consideration of the comments raised in this letter.

Sincerely,



Thomas F. Larkins  
Vice President, Corporate Secretary  
and Deputy General Counsel

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

David M. Cote, Chairman and Chief Executive Officer  
Katherine L. Adams, Senior Vice President and General Counsel  
Michael W. Wright, Chair, Corporate Governance and Responsibility Committee