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August 13, 2009

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

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

Dear Ms. Murphy:

I am Senior Vice President, Corporate Affairs, General Counsel and Secretary of Whirlpool Corporation, the world's leading manufacturer and marketer of major home appliances with annual sales of approximately $19 billion and approximately 70,000 employees worldwide.

Whirlpool's outstanding reputation throughout the world is due in large part to its commitment to sound corporate governance. We take this responsibility seriously and are proud of the recognition that our efforts have received. According to RiskMetrics Group's Corporate Governance Quotient rating system, Whirlpool outperforms approximately 95% of the companies in its industry. I genuinely share the Commission's belief that good corporate governance is important to the U.S. capital markets, but oppose the one-size-fits-all approach taken by the Commission in its June 10, 2009 proposing release entitled "Facilitating Shareholder Director Nominations" (the "Proposed Rule").

U.S. companies, like Whirlpool, have succeeded globally for generations not only because of the great efforts of their workforce, but also because U.S. companies have been able to adapt quickly to the changing global marketplace. The Proposed Rule significantly undermines the long established, widely accepted and successful model of corporate leadership and oversight that has allowed U.S. companies to grow and adapt in a free market environment. Substituting the Commission's judgment for that of stockholders, boards of directors and state legislatures by imposing a one-size-fits-all proxy access rule is inappropriate and unnecessary and would deprive stockholders and companies of the opportunity to consider more customized proxy access procedures. States (most notably Delaware) have recently enacted rules specifically allowing companies to include proxy access to stockholder nominees. Because it

takes at least two proxy cycles for any changes involving stockholder influence to begin to take effect (see, for example, the sea change toward majority voting in uncontested director elections over the past few years), it is premature to ignore these recent improvements in the governance landscape and impose drastic and counterproductive measures. I believe, like Commissioner Troy A. Paredes, that the Proposed Rule presents a real threat of overregulation.

In the event that the Commission proceeds to adopt its Proposed Rule, I would strongly urge the Commission to construct the associated regulations in a manner that ensures that the U.S. capital markets have room to be flexible, adaptive and competitive. The fact that the Commission is seeking comments on almost 500 specific questions on the Proposed Rule demonstrates the complexity and importance of this matter. I would urge the Commission to consider the following points, in an effort to strike the right balance.

Request for Comment C.18: Should the rule include a provision denying eligibility (1) to any nominating shareholder or group who had a nominee or (2) to any nominee himself or herself who was, included in the company's proxy materials within a specified period of time (e.g., the last one, two or three years) where the nominee did not receive a sufficient percentage of the votes (e.g., 5%, 15%, 35%)?

Yes, the Rule should include a provision denying such eligibility in both situations. I believe the appropriate "look back" period should have two tiers. Specifically, if a nominating stockholder or stockholder group nominated a nominee for election at an annual stockholder meeting ("AM") and such nominee received less than 25% of the votes cast in the director election in the case of a company with majority voting (such as Whirlpool), the nominating stockholder or any member of the nominating stockholder group should not have access to the company's proxy materials at its next AM. If such nominee received less than 10% of the votes cast in the director election in the case of a company with majority voting, the nominating stockholder or any member of the nominating stockholder group should not have access to the company's proxy materials at its next two AMs.

The failure of a stockholder's nominee to receive a sufficient percentage of the votes at the last one or two AMs demonstrates a lack of support among the majority of stockholders for the views of that nominating stockholder. Similarly, the failure of a particular nominee to receive a sufficient percentage of the votes at the last one or two AMs demonstrates a lack of support for that nominee among the majority of stockholders. There should be a meaningful disincentive to prevent stockholders from repeatedly nominating persons as directors of the company – and an equally meaningful disincentive for nominees to seek election as directors – where there is a demonstrated lack of support among the majority of stockholders for the views of the nominating stockholders and/or the views or qualifications of the nominees themselves. Without these disincentives, the Rule's increased proxy access would do nothing to improve board performance while adding to the very significant costs of implementation.

Request for Comment G.7: The Rule provides that a company will have 14 days from receipt of a shareholder's notice of its desire to include a director nominee or nominees in the company's proxy materials to respond to that notice and notify the shareholder of any determination not to include the nominee or nominees in its proxy materials. Is this time period sufficient?

I believe this 14 calendar day time period is too short and should be extended to 15 business days. Instead of the "first in" approach proposed by the Commission in the Rule, I believe that the largest stockholder or stockholder group in terms of the number of voting securities over which it has voting control should be given priority access to a company's proxy materials. Accordingly, this 15 business day period should commence on the first business day following the last day on which stockholders could notify a company of their intention to seek to include a nominee or nominees in a company's proxy materials.

In most cases, this 14 calendar day time period will include only 10 business days and may, in the event of a holiday falling with this 14 day period, include even fewer business days. In determining whether a company is required to include a particular stockholder's nominee or nominees in its proxy materials, the company will be required to make a number of determinations, including the eligibility of the stockholder to make use of the Rule 14a-11 and the eligibility of the nominees under the rule. These determinations may require considerations of state law, stock exchange listings, and relationships between the company and the nominating stockholder. I believe 14 calendar days will provide too little time for a company to make these decisions, particularly as many companies may determine it is necessary or appropriate to consult with their board of directors regarding the appropriate response to such a notice. I believe 15 business days, while still requiring diligent attention to the matter by the company, will give companies a sufficient amount of time to respond to the notice.

Request for Comment I.8: Rule 14a-8 currently requires that a shareholder proponent have held continuously at least $2,000 in market value or 1% of the company's securities entitled to vote on the proposal at the meeting for at least one year as of the date of submission of the proposal. Are these thresholds appropriate?

No, I believe the thresholds for inclusion in the company's proxy materials of a stockholder proposal regarding director elections should be the potentially higher thresholds for inclusion of director nominees in the company's proxy materials under Rule 14a-11.

Only a reasonably significant stockholder (based on the tiered-shareholding approach proposed for Rule 14a-11) should have access to a company's proxy materials for purposes including stockholder proposals regarding director nominations. I think it is not logical to subject stockholder proposals regarding the director nomination process – which should be within the purview of the company in the first instance – to a lower threshold than director nominations. This is particularly true because such stockholder proposals will likely be proposed bylaw amendments, which will generally require the approval of a majority of all outstanding voting securities.

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Even though I believe a one-size-fits-all federal regulation is not a prudent move at this time, I appreciate this opportunity to comment on the Proposed Rule. Certainly, if the Commission remains determined to adopt the Proposed Rule despite the significant concerns expressed in this and other comment letters, I would strongly encourage the Commission to delay the effective date until at least the 2011 proxy season in order for companies and their

boards of directors to have sufficient time to amend their bylaws and take other preparatory actions. If you have any questions regarding this letter, please contact me at (269) 923-5000.

Sincerely,

Daniel F. Hopp

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