EMERSON

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VIA E-MAIL

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

Re: File No. S7-10-09
Release No. 34-60089
Facilitating Shareholder Director Nominations

Dear Ms. Murphy:

I am writing on behalf of Emerson Electric Co. ("Emerson") to comment on the rules recently proposed by the Securities and Exchange Commission (the "Commission") that would require, under certain circumstances, public companies to include in their proxy materials shareholder nominees for election as corporate directors ("Proxy Access"). See Commission File No. S7-10-09, Release No. 34-60089 (the "Proposed Rules"). As explained below, we oppose the Proposed Rules, both in principle and in how they would be applied if adopted as proposed.

When and how to provide for shareholder nomination of directors is a matter properly left to a company's shareholders and to applicable state law

Federalizing Proxy Access and imposing a "one-size-fits-all" standard on all covered issuers, as the Proposed Rules do, would deny shareholders, and the states in which their companies are incorporated, the right to determine whether and how Proxy Access will be implemented. It would preempt further efforts on the state level to address this issue in a balanced way, as the State of Delaware recently has done in the amendments to its corporation law. It would further prevent shareholders and boards of directors from using such developments in state law to craft Proxy Access approaches that make sense for their companies. As Commissioner Troy Paredes has stated, "The proposal encroaches far too much on internal corporate affairs, the traditional domain of state corporate law, and in doing so, denies each corporation the flexibility needed to adapt its governance practices to its distinct qualities and circumstances."[1]

If adopted, the Proposed Rules should not apply to companies that are required by state law to elect directors by majority vote, because possible benefits of the Proposed Rules are negligible, and the potential complications and costs higher, for such companies

Emerson is incorporated in the State of Missouri. Missouri corporation law requires that directors be elected by majority vote. Under this law, shareholders already have a meaningful and low-cost way to express disapproval of director and company performance and policies, and it cannot be abrogated by the board of directors or by bylaw amendment. We believe that this statutory construct is superior to Proxy Access as proposed. A "vote no" campaign against the director of a Missouri corporation can result in healthy debate over the actual merits of performance or policy, while avoiding the costs, uncertainties and negative consequences of the Proposed Rules.

More specifically, allowing shareholders to include their candidates in company proxy materials would make it less likely that any one director will receive a majority vote, which could have serious negative repercussions on a company. For example, if a company's audit committee financial expert does not receive a majority because of votes for an opposing shareholder candidate on the same proxy card, does the Commission expect that the company and the other shareholders are to accept the loss of financial expertise on that committee? There is nothing we can find in the Proposed Rules that would obligate the opposing candidate to qualify as an audit committee financial expert.

We note that shareholders may nominate their own director candidates and mount a proxy contest under the current framework of rules. In these days of e-Proxy, the Internet and social media sites, a proxy contest is a more reasonable alternative than ever for shareholders who are interested in serious long-term change at a company.

For all these reasons, Emerson urges that companies required by state law to elect directors by majority vote, be exempt from the coverage of any Proxy Access rules that the Commission may decide to adopt.

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[1] Remarks by Commissioner Troy A. Paredes on June 23, 2009 to the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce.

The Proposed Rules would enable special interest groups to dominate Proxy Access

The vast majority of shareholders will have little incentive to nominate director candidates where management or company performance is reasonably satisfactory. Not so for activist shareholders such as certain labor unions and public pension funds, which have strong outside agendas that often diverge from, or even conflict with, the long-term interests of the companies in which they invest. This relatively small group of shareholders is responsible for the majority of shareholder proposals and governance-related litigation facing companies today. We think it inevitable that such shareholders would dominate Proxy Access as proposed, in effect making it a tool for a select group rather than a practical way for all shareholders to be heard.

Attempting to remodel corporate governance as constituency-based would lower the quality of corporate management

The Commission's effort to promote Proxy Access appears to arise from a belief that corporate governance should operate as representative government does. As many commentators have noted over the years, this is a fundamental departure from the traditional, fiduciary-based view of corporate governance. We believe that it is both unwise and unwarranted to import a constituency-based governance model into the corporate setting.

Most corporate directors are not, and have no interest in being, politicians. They do not seek public notoriety, or the give and take of electoral contests. The prospect of "political" election contests will be repugnant to many qualified prospective directors, as will the prospect of serving on adversarial and tension-filled boards. This will discourage them from serving precisely those troubled companies which have the most need of their abilities. It is another reason why Emerson opposes the Proposed Rules in principle.

The Proposed Rules do not adequately guard against the use of Proxy Access to effect a change of control

The Proposed Rules require that a nominating shareholder or shareholder group certify that it has no current intent to change control of the company. But there is no prohibition on a shareholder's changing its mind, and no requirement that its successfully-elected director nominee resign from the board if this intent does change.

This would be an enormous loophole for potential acquirers. Hedge funds or others who seek to change control of a company could easily disguise their intent, and then conveniently "change their minds" following an election. It would be very difficult for the company to prove, in hindsight, that the certification was false when made.

It does not help that shareholder-nominated directors cannot constitute a majority of the board. Having a director confers enormous informational and strategic advantages on a potential acquirer. This would be injurious to the company's shareholders, since it could cause a transaction to occur that would not otherwise have occurred, or a transaction to occur with an entity with whom it would not otherwise have occurred.

The shareholder ownership threshold in the Proposed Rules is too low

If the Commission decides to adopt Proxy Access rules, the proposed 1% threshold for large accelerated filers and 3% for accelerated filers should each be raised to 5% for an individual nominating shareholder and 10% for a group of nominating shareholders. The currently proposed thresholds would allow multiple nominating shareholders for a given meeting, and a potentially overwhelming number of nominations if shareholders aggregate into groups. The predictable consequences of this would be (1) a rush to nominate directors pursuant to the first-come, first-served procedure in the Proposed Rules, (2) potential litigation over which nominees are entitled to be on the ballot, and (3) increased costs to the company—and, indirectly, to all its shareholders—in determining and resolving these matters.

Requiring shareholder nominations for director on the same proxy card as company candidates would lead to confusion and protracted litigation

In recent years, national and state elections have been bedeviled by sharply contentious court battles over incorrectly marked ballots allegedly caused by voter confusion. Requiring that shareholder nominees appear on the company proxy card would likely have the same effect. The current rules handily avoid this problem—a shareholder slate of directors is on an entirely separate proxy card. A shareholder ordinarily submits only one card, but if two cards are submitted, the latest dated card has the effect of revoking the earlier card.

Proxy cards that contain more directors than board vacancies can, and in the course of events most likely will, contain errors as shareholders cross out names, vote for too many candidates, too few, or none at all. This could have the unintended results of failure to obtain a quorum or disenfranchisement of these shareholders. Emerson agrees with the suggestions of the Society of Corporate Secretaries & Governance Professionals that (1) there should be a clear distinction in both the proxy statement and proxy card between the company slate and the shareholder nominees, (2) the proxy card should contain a bold statement instructing the shareholder that, in order to vote for a shareholder nominee, he or she must both check the box for that nominee and strike a candidate from the company slate, and (3) any proxy including shareholder nominees that is voted in blank will be deemed a vote for the entire company slate.[2]

Not requiring shareholder nominees to meet all independence and other qualification requirements would interfere with a company's corporate governance and expose it to undue legal risks

For companies with listed securities, the Proposed Rules would require shareholder nominees for director to be independent under the black-letter independence rules of the applicable securities exchange, but would exempt them from the subjective independence requirements imposed by the very same rules.

The independence rules were designed in their totality to promote good corporate governance through oversight by independent directors. They reflect a widely-shared belief that an independent board promotes and protects shareholder interests. However, any black letter rule system is bound, in the end, to be inadequate at one level or another, which is why the exchanges impose their subjective standards.

The exemption from subjective independence standards in the Proposed Rules also would jeopardize compliance with the applicable stock exchange's director independence rules. Because directors who do not meet the subjective independence screen would not qualify as independent, the election of such directors could reduce the number of independent directors below the number required by the exchange, or make it difficult to adequately staff independent board committees, including the required audit, compensation and nominating committees.

The Proposed Rules also exempt shareholder nominees from a company's internal corporate governance standards on director qualifications that are tailored to its own particular needs and circumstances, including a requirement that the nominee complete and submit a Directors and Officers Questionnaire. These standards also can help a company implement the black letter exchange rules to which the nominees are subject.

We believe that the exemption of shareholder nominees from the subjective exchange requirements and the company's own internal qualification standards is both unnecessary and unwise, and could expose the company to undue risk and litigation. For example, under the Proposed Rules, it is not at all clear that a

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[2] Comment letter of the Society of Corporate Secretaries & Governance Professionals, dated August 10, 2009.

company could exclude shareholder nominees from its proxy statement and proxy card in the following scenarios:

- A shareholder nominee is affiliated with an actual or potential competitor of the company, and the nominee would not otherwise be prohibited from serving on the company's board pursuant to Section 8 of the Clayton Act

- The company is engaged in the defense business, and the shareholder nominee does not have the security clearance that it requires of all its directors

This is to say nothing of the potential liability to which the company would expose itself if it failed to seek exclusion of the shareholder nominee in either of the foregoing scenarios.

We appreciate the opportunity to provide Emerson's position and comments on the Proposed Rules.

Respectfully submitted,

Frank L. Steeves

FLS:tlp