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Charles O. Holliday, Jr.
Chairman of the Board

August 14, 2009

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 this letter as Chair of the Board of DuPont and Chair of the Audit Committee of John Deere.

In addition, I serve as the Chair of the Council On Competitiveness. American industry is at a critical tipping point. As I look at our many challenges, I hope you will fully consider the following points covered in this letter.

As the Commission is well aware, this is the third time in the past six years that it has issued proposed rules addressing the ability of shareholders to include their director nominees in company proxy statements, so-called "proxy access." On each of those prior occasions, commentators raised substantial concerns about the proposals, and the Commission determined not to move forward. Now, the Commission has proposed its most expansive approach to proxy access, stating that the proposals are warranted "in light of one of the most serious economic crises of the past century." We must take issue with this proposition as the Commission has been debating the issue of proxy access for decades. Even if there is some nexus to the economic crisis, the proposed proxy access regime will, in the words of Commissioner Casey, "be imposed not only the country's largest banks and Wall Street firms, but also on thousands of other large and small public companies across the country." Most troubling is the fact that the Commission's proposal may well exacerbate one of the agreed-upon causes of the crisis—the emphasis on short-term gains at the expense of long-term, sustainable growth.

Further, while the Commission indicates that proposed Rule 14a-11 is intended to remove impediments to shareholders exercising their *state* law rights, it would instead create a *federal* mandate that would deprive shareholders and their companies from exercising their rights under state law to vary the terms of any proxy access procedure. This "one size fits all" federal mandate does not facilitate shareholder rights but instead supplants the shareholder choice that is provided under state law. State law, as evidenced by the recent amendments to Delaware law addressing proxy access and proxy reimbursement (which are described in our detailed comments), provides shareholders and boards of directors with the opportunity to deal effectively with the myriad of different circumstances applicable to their companies in designing a proxy access and/or proxy reimbursement regime. This enabling approach of state law has worked well in recent years as hundreds of companies have amended their bylaws to adopt a majority voting standard in uncontested director elections voluntarily and in response to votes on shareholder proposals. We believe that a similar approach is warranted here, rather than have the Commission impose a "one size fits all" federal mandate.

In addition, proposed Rule 14a-11 and related proposals, referred to in our detailed comments as the "Proposed Election Contest Rules," would result in expensive, highly contentious, and distracting proxy contests. At a time when American business is responding to "one of the most serious economic crises in the past century," we question the wisdom of undertaking actions that will distract management and board attention, invite disruption in the boardroom and discourage directors from serving. The prospect of having to run for election in a highly charged, political atmosphere and serve on a board with "special interest" directors is sure to deter the very qualified and experienced individuals we want to serve as members of corporate boards. This is especially true given the Commission's recent approval of amendments to New York Stock Exchange Rule 452, which will eliminate broker discretionary voting in director elections at shareholder meetings held after January 1, 2010.

We also believe that the Commission has grossly underestimated the staff resources necessary to administer the procedure to be created under proposed Rule 14a-11 at a time when the Commission is seeking, and being given, greater responsibilities to oversee the nation's capital markets. It also has underestimated the resources that companies will have to expend under the Proposed Election Contest Rules as described in our more detailed comments. Finally, the Commission has not addressed the fact that proposed Rule 14a-l1 will increase the influence of unregulated proxy advisory services.

Given the substantial problems presented by proposed Rule 14a-11, the Commission's questionable authority to enact it, and other infirmities in the rulemaking process, we believe that a far better alternative would be for the Commission to defer any action on proposed Rule 14a-11 and instead adopt revised amendments to Rule 14a-

8(i)(8) to permit shareholders to include proxy access shareholder proposals in company proxy statements. While in 2007 we did not support the Commission's proposal to amend Rule 14a-8(i)(8) to permit such shareholder proposals, we believe that recent state law developments and the addition of certain disclosure provisions to the Commission's current proposals warrant a different position today. As noted above, several states, including Delaware, have amended, or are in the process of considering amendments to, their corporate laws to permit boards and shareholders to adopt bylaw amendments addressing the ability of shareholders to have their director nominees included in company proxy statements and providing for reimbursement of expenses in proxy contests. Moreover, we note that one of our primary concerns about the Commission's 2007 proposal was that it would have permitted shareholders to include their nominees in company proxy statements without the attendant disclosures mandated by the Commission's rules governing proxy contests. In contrast, the current proposals include disclosure requirements when a shareholder nominee is included in a company proxy statement pursuant to state law or a company's governing documents.

If the Commission were nevertheless to proceed with adopting proposed Rule 14a-11 despite the problems identified above, our detailed comments set forth significant modifications that, if not included, would make the rule particularly problematic. Most importantly, any final rule should not preempt the proxy access procedures established or authorized by state law or a company's governing documents. Accordingly, proposed Rule 14a-11 should not apply where a company's shareholders or board have adopted a proxy access or proxy reimbursement bylaw or where a company is incorporated in a state whose law includes a proxy access right or the right to reimbursement of expenses that shareholders incur in connection with proxy contests. In addition, we suggest exempting companies from proposed Rule 14a-11 if they have adopted majority voting in uncontested director elections. Any final rule also must contain: (1) triggers such that proposed Rule 14a-11 would only be applicable when certain events have occurred indicating that greater director accountability is necessary at a particular company; and (2) revised thresholds that satisfy the Commission's objective of limiting the proposed rules to "holders of a significant, long-term interest." Such measures are necessary to ameliorate the significant cost and disruption that will result from proposed Rule 14a-11. In addition, we suggest limiting the number of directors that can be nominated under proposed Rule 14a-11. Our detailed comments contain a number of other recommendations that we believe should be implemented if the Commission moves forward with proposed Rule 14a-11, a course of action which we strenuously oppose. Importantly, we recommend that there be at least a one-year transition period before the effective date of any rule creating a federal proxy access mandate.

In conclusion, we believe that a federal proxy access right is unnecessary, has serious adverse consequences, and is beyond the Commission's authority to adopt. Most importantly, it has the potential to exacerbate one of the causes—short-termism—of the very economic crisis that the Commission says it seeks to address in its proposed rules.

Instead, the Commission should adopt revised amendments to Rule 14a-8(i)(8) to provide shareholders and boards of directors the opportunity to develop company-specific approaches to proxy access. In addition, it should adopt proposed Rule 14a-19 to provide shareholders with essential disclosures if a shareholder nomination is included in a company's proxy material pursuant to state law or the company's governing documents.

Sincerely,

Enclosures

cc: The Honorable Mary L. Schapiro, Chairman
The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Ms. Meredith B. Cross, Director, Division of Corporation Finance
Mr. David M. Becker, General Counsel and Senior Policy Director
Ms. Kayla J. Gillan, Senior Advisor to the Chairman