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August 17, 2009

VIA ELECTRONIC MAIL (rule-comments@sec.gov)
Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Ms. Murphy:

DuPont welcomes the opportunity to comment on the Securities and Exchange Commission's proposed rule on facilitating shareholder nominations. Our company fully supports the fundamental right of a shareholder to nominate and elect directors to company boards and the Commission's goal of removing any impediments to the exercise of that right. However, we believe that a system which allows for the private ordering of proxy access is better suited for that purpose. Accordingly, we support the Commission's adoption of the proposed amendment to Rule 14a-8(i)(8), without a requirement that proposals thereunder be consistent with proposed Rule 14a-11.

Our Company

DuPont puts science to work by creating sustainable solutions essential to a better, safer, healthier life for people everywhere. Operating in more than 70 countries with 60,000 employees worldwide and $30.5B in revenue for 2008, DuPont offers a wide range of innovative products and services for markets including agriculture, nutrition, electronics, communications, safety and protection, home and construction, transportation and apparel. DuPont is committed to maintaining a governance model that returns long-term value to our shareholders. We believe that a "one size fits all" proxy access regime falls short of that goal for the reasons enumerated in this letter.

Private Ordering of Proxy Access

It is our view that the Commission's proposed Rule 14a-11 fails to make certain that shareholders with sufficient long-term economic interest in the company have appropriate proxy access. The proposed mandatory proxy access rule also fails to consider adequately the degrees to which public companies differ, including variance in capital and board structures and diversity of approaches to corporate governance.

The laws of several states, such as Section 112 of the Delaware General Corporation Law, provide companies the flexibility to adopt proxy access bylaws which better facilitate the creation of an individualized, more workable proxy access model. This private ordering approach gives shareholders the freedom to choose not only who the directors of a company should be, but also the manner in which the nominees are selected. Within this framework, a company and its shareholders can together develop the specific proxy access solution most appropriate for the individual circumstances.

The private ordering approach also offers the advantage of being easier for the Commission to administer and less expensive for companies to implement. Companies and their shareholders are already familiar with the procedural requirements of Rule 14a-8, and although more staff resources would be required, the staff would not have to adapt to an entirely new construct. And although we realize that the costs to a company of a mandatory proxy access rule should not be determinative, we believe that the benefits gained from such a system do not outweigh the associated costs.

For the reasons highlighted above, we support the adoption of the Commission's proposed amendment to Rule 14a-8(i)(8), without a requirement that proposals thereunder be consistent with proposed Rule 14a-11. However, to ensure that the shareholders have an ownership interest that is consistent with the right to include nominees on the company's proxy, we believe the threshold for a Rule 14a-8 proxy access proposal should be higher than the current threshold for shareholder proposals. We would suggest a threshold requiring the proponent to hold at least 1% of the outstanding shares of the company.

Adoption of the amendment to Rule 14a-8(i)(8), with the threshold ownership modification, would provide an effective way for companies, their boards and their shareholders to resolve issues related to proxy access, allow flexibility to adapt to changing needs, and avoid unintended negative consequences resulting from the "one size fits all" approach of proposed Rule 14a-11.

Needed Revisions to Proposed Rule 14a-11

If the Commission decides to adopt proposed Rule 14a-11, it should make revisions to address important workability issues. Modifications to the proposal are needed to better balance the benefit to shareholders of being able to participate more fully in the process against the cost and potential disruption to the company and its other shareholders.

Eligibility Considerations

Ownership thresholds for nominating shareholder eligibility should be high enough to strike that balance. Although we believe that the thresholds should be established by companies and shareholders through a private ordering process, we would propose minimum thresholds of 5% for individual shareholders and 10% for shareholder groups. These thresholds will not serve as obstacles to proxy access, but will guarantee that the shareholders have an ownership interest consistent with the right to include nominees on the company's proxy.

The rule should also place an emphasis on shareholders that truly have an economic interest in the shares on which their nomination is based. "Decoupling" allows a shareholder to separate his/her economic and voting interest in shares. Therefore, the Rule should require that a nominating shareholder have a net long beneficial ownership position in the shares for the required holding period.

Furthermore, shareholders should be required to have held their shares for longer than one year (two or three at minimum) and certify their intent to hold those shares for a reasonable period of time beyond the meeting date. This would ensure that nominating shareholders or groups have the appropriate long-term interest in the company before being allowed to include a nominee in the company's proxy.

Nomination Restrictions

We urge the Commission to consider the following restrictions on shareholder nominations.

- *Lower Cap on Shareholder Nominees.* The 25% cap on shareholder nominees is too high and could result in a board being divided into separate, unworkable factions with insurmountable differences in strategic philosophy. Reducing the cap would ameliorate this potentially dysfunctional effect.

- *Substitutions.* If a shareholder nominee is excluded in connection with the filing of a no-action letter or if a nominee otherwise

withdraws, the company should not be required to replace that shareholder nominee. Moreover, if the event occurs after the mailing of the proxy materials, the company should be permitted to issue supplemental materials.

- *Shareholder Groups.* Consistent with the one proposal limit under Rule 14a-8(c), a shareholder should be limited to participation in no more than one shareholder group for the purpose of nominating a candidate under Rule 14a-11.

- *Nominee Independence.* Consistent with the Commission's interest in excluding from the proxy access regime those shareholders seeking to effect a change in control of the company, nominees should be independent from the nominating shareholder or shareholder group. Not only would this alleviate concerns over "special interest" directors and the negative impact they may have on the ability of the company to attract otherwise qualified board candidates, but it would also protect against the possibility of a nominee acting in the interest of the nominating shareholder to the detriment of all shareholders.

- *Shareholder Nominee Status.* Shareholder nominee status should be retained for a period of three years (provided the nominating committee nominates the individual) so as to discourage management from refusing to re-nominate a shareholder nominee which, theoretically, would "convert" him/her into a "management nominee." By refusing to do so, the company could avoid having an additional shareholder nominee on the board. This approach would be consistent with the practical effect that would result under the rule, as currently proposed, for a board with three-year classified terms.

- *One Nominee Limit.* Limiting shareholders to one nominee would expand the opportunity for other shareholders to suggest a nominee. Such a limit would also be consistent with the Commission's interest in excluding from the proxy access regime those shareholders seeking to effect a change in control of the company.

- *Resubmission Thresholds.* Similar to 14a-8(i)(12), the failure of a shareholder nominee to get a minimum percentage of the vote (at least 25 or 30% of the votes cast) should result in the nominee and the shareholder being barred from the process for a minimum period of time (at least three years). Such a bar would limit company expenditures for nominees who have recently been unsuccessful in attracting sufficient support, while giving other

shareholders a greater opportunity to nominate potentially more successful candidates.

Procedural Changes

Proposed Rule 14a-11 currently includes a "first-in-time" rule for situations where the number of nominees exceeds the allowable cap on shareholder nominees. In order to alleviate the administrative burden on the company under the proposed "first-in-time" rule, where there is more than one nominating shareholder, the nominee of the largest such shareholder should first be included in the proxy. Shareholder size should be based on holdings as of the last day of the window. The rule should also specify a window period during which shareholders can furnish Schedule 14N to further ease the administrative burden on the company.

Although the proposed rule requires the nominating shareholder to certify the nominee's objective independence for purposes of the NYSE independence rules, there is a myriad of regulated areas in which a company could be required to run other background checks. In addition, a company's bylaws or corporate governance guidelines may be more restrictive than the NYSE standards. The proposed timing of the new rule would not accommodate these types of critical clearances. Accordingly, the rule should require the nominee to complete the company's standard director independence questionnaire. Completion of the questionnaire would provide the board with the information necessary to determine appropriate board committee composition and would help the board strike the right balance of independent and non-independent directors.

Liability for False or Misleading Statements

Rule 14a-11 should expressly provide that the company will not be liable for any false or misleading statements in its filings with the Commission where statements are based on information provided by the nominee or nominating shareholder. Unlike information compiled by the nominating committee and reviewed by the board with respect to management nominees, the company should not be responsible for verifying the accuracy of information provided by the nominating shareholder and, accordingly, should not be held liable if that information proves to be false or misleading.

Objecting Beneficial Owner/Non-Objecting Beneficial Owner (OBO/NOBO) Reform

If proposed Rule 14a-11 is adopted, the Commission should counterbalance the adoption of mandatory proxy access by reforming its OBO/NOBO rules in a manner that would facilitate better communications between a company and its shareholders. Currently, companies can only contact non-objecting shareholders who register as such through their brokers.

Implementing a default NOBO position, instead of the current default OBO rule, would provide a greater flow of communication between the company and its "street name" shareholders. Regardless of proposed Rule 14a-11's future, we hope that the Commission will seriously consider revisiting the OBO/NOBO rules.

Opt-Out

To preserve flexibility for those companies and shareholders desiring to structure a proxy access mechanism tailored to their specific circumstances, Rule 14a-11 should include an "opt out" from the application of the rule. This objective could be achieved with a provision allowing shareholders to modify Rule 14a-11 or eliminate it in its entirety through a shareholder-approved bylaw. The extent to which the proxy access model developed at a given company varies from Rule 14a-11 should be irrelevant.

Concluding Remarks

Over the past several years, there have been an unprecedented number of significant developments in corporate governance and the role of shareholders in the nomination and election of directors. These include widespread adoption of majority voting for directors, implementation of e-proxy, promulgation of expanded disclosure requirements, passage of Section 112 of the Delaware General Corporation Law, and elimination of broker discretionary voting for directors under NYSE Rule 452.

The impact of these and other recent changes has yet to play out. We encourage the Commission to allow sufficient time for these developments, in conjunction with the proposed amendment to Rule 14a-8(i)(8), to provide the framework for meaningful action by companies and shareholders on proxy access. We believe the tools are in place to support a wide range of approaches appropriate for companies with a diversity of circumstances. If, after a body of experience develops, it appears that further action is necessary to achieve the Commission's objectives, proposed Rule 14A-11 could be reconsidered.

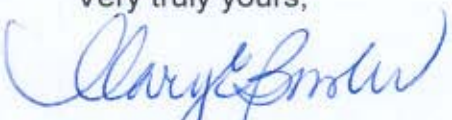
In summary, DuPont would support the adoption of the proposed amendment to Rule 14a-8, without a requirement that proposals thereunder be consistent with proposed Rule 14a-11. By doing so, the Commission would encourage private ordering on the subject of proxy access, which, we believe is a better, more flexible model than the mandatory proxy access contemplated by proposed Rule14a-11.

Our comments are not intended to be all-inclusive, and are limited to those most important to our company. We do, however, support many of the comments being submitted to the Commission on this matter by the Society of Corporate Secretaries & Governance Professionals, the Business Roundtable, and others offering perspectives from the issuer community. We also believe

that the nature of the topic, the number of matters upon which comments were requested and the number of comment letters submitted suggest that it would not be possible to fully consider this proposal and issue a final rule in time for the 2010 proxy season.

For all of the above reasons, we respectfully urge the Commission not to adopt proposed Rule 14a-11 at this time. Thank you for your consideration of our position.

Very truly yours,



Mary E. Bowler
Corporate Secretary and
Corporate Counsel

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