



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

December 28, 2010

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Re: General Electric Company
Incoming letter dated December 3, 2010

Dear Mr. Mueller:

This is in response to your letter dated December 3, 2010 concerning the shareholder proposals submitted to GE by Angelina Iannacone. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Gregory S. Belliston
Special Counsel

Enclosures

cc: Angelina Iannacone

*** FISMA & OMB Memorandum M-07-16 ***

December 28, 2010

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: General Electric Company
Incoming letter dated December 3, 2010

The proposals relate to GE's management and a dutch tender offer.

There appears to be some basis for your view that GE may exclude the proposals under rule 14a-8(f). We note that the proponent appears not to have responded to GE's request for documentary support indicating that she has satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b). Accordingly, we will not recommend enforcement action to the Commission if GE omits the proposals from its proxy materials in reliance on rules 14a-8(b) and 14a-8(f). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which GE relies.

Sincerely,

Matt S. McNair
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

December 3, 2010

Ronald O. Mueller
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Client: C 32016-00092

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *General Electric Company.*
Shareowner Proposals of Angelina Iannacone
Exchange Act of 1934—Rule 14a-8

Dear Ladies and Gentlemen:

This letter is to inform you that General Electric Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2011 Annual Meeting of Shareowners (collectively, the “2011 Proxy Materials”) two shareowner proposals and statements in support thereof submitted by Angelina Iannacone (the “Proponent”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2011 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that shareowner proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the proposals, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSALS

The first proposal (“Proposal 1”) requests that the Company’s Board of Directors ask for the resignation of the Company’s CEO and begin the search for a new CEO.

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 3, 2010
Page 2

The second proposal (“Proposal 2”) requests that the Company’s Board of Directors “approve a Dutch tender offer for 20% of its shares outstanding at approximately [\\$]18 – [\\$]18.50 a share.”

Copies of Proposal 1 and Proposal 2 (collectively, the “Proposals”) are attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposals may be excluded from the 2011 Proxy Materials pursuant to:

- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company’s timely request for that information;
- Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide a written statement of intent to hold the requisite amount of Company shares through the date of the 2011 Annual Meeting in response to the Company’s timely request for that statement; and
- Rule 14a-8(c) because the Proponent has submitted more than one shareowner proposal to the Company for consideration at the 2011 Annual Meeting and failed to withdraw one proposal in response to the Company’s timely request that she do so.

BACKGROUND

The Proponent submitted the Proposals to the Company in two letters dated November 2, 2010. The Proponent’s submission contained several procedural deficiencies: (i) she did not provide verification of her ownership of the requisite number of Company shares; (ii) she did not state her intention to hold such shares through the date of the 2011 Annual Meeting; and (iii) she submitted two proposals for consideration at the 2011 Annual Meeting.

Accordingly, in a letter dated November 12, 2010, which was sent via overnight delivery within 14 days of the date the Company received the Proposals, the Company sent the Proponent a letter notifying her of the procedural deficiencies as required by Rule 14a-8(f) (the “Deficiency Notice”). In the Deficiency Notice, attached hereto as Exhibit B, the Company informed the Proponent of the requirements of Rule 14a-8 and how she could cure the procedural deficiencies. Specifically, the Deficiency Notice stated:

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 3, 2010
Page 3

- the ownership requirements of Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b);
- that the Proponent must submit a written statement of her intent to hold the requisite number of Company shares through the date of the Company's Annual Meeting under Rule 14a-8(b);
- that the Proponent must indicate which proposal she would like to withdraw as the Proponent was permitted to submit no more than one proposal under Rule 14a-8(c); and
- that the Proponent's response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice also included a copy of Rule 14a-8. *See* Exhibit B.

The Company's records confirm delivery of the Deficiency Notice at 2:14 p.m. on November 15, 2010. *See* Exhibit C. As of the date of this letter, the Proponent has not responded to the Deficiency Notice.

I. The Proposals May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Provide Proof Of Continuous Stock Ownership.

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent did not substantiate her eligibility to submit the Proposals under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a shareowner] must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareowner] submit[s] the proposal." Staff Legal Bulletin No. 14 (July 13, 2001) ("SLB 14") specifies that when the shareowner is not the registered holder, the shareowner "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareowner may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

Rule 14a-8(f) provides that a company may exclude a shareowner proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 3, 2010
Page 4

time. The Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notice, which included the information listed above. See Exhibit B.

On numerous occasions the Staff has permitted the exclusion of a shareowner proposal based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). See *Union Pacific Corp.* (avail. Jan. 29, 2010) (concurring with the exclusion of a shareowner proposal under Rule 14a-8(b) and Rule 14a-8(f) and noting that "the proponent appears to have failed to supply, within 14 days of receipt of Union Pacific's request, documentary support sufficiently evidencing that he satisfied the minimum ownership requirement for the one-year period required by Rule 14a-8(b)"); *Time Warner Inc.* (avail. Feb. 19, 2009); *Alcoa Inc.* (avail. Feb. 18, 2009); *Qwest Communications International, Inc.* (avail. Feb. 28, 2008); *Occidental Petroleum Corp.* (avail. Nov. 21, 2007); *General Motors Corp.* (avail. Apr. 5, 2007); *Yahoo, Inc.* (avail. Mar. 29, 2007); *CSK Auto Corp.* (avail. Jan. 29, 2007); *Motorola, Inc.* (avail. Jan. 10, 2005); *Johnson & Johnson* (avail. Jan. 3, 2005); *Agilent Technologies* (avail. Nov. 19, 2004); *Intel Corp.* (avail. Jan. 29, 2004); *Moody's Corp.* (avail. Mar. 7, 2002). Moreover, the Staff has concurred in the exclusion of a shareowner proposal based on a proponent's failure to provide any evidence of eligibility to submit the shareowner proposal. See, e.g., *General Motors Corp.* (avail. Feb. 19, 2008) (concurring with the exclusion of a proposal where the proponent failed to provide any response to a deficiency notice sent by the company).

As in *General Motors*, the Proponent has failed to provide any proof of ownership in response to the Deficiency Notice and has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposals. Accordingly, we ask that the Staff concur that the Company may exclude the Proposals under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. The Proposals May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Provide A Statement Of Intent To Hold The Requisite Shares Through The Date Of The 2011 Annual Meeting.

The Company may exclude the Proposals under Rule 14a-8(f)(1) because the Proponent did not substantiate her eligibility to submit the Proposals under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a shareowner] must ... continue to hold [at least \$2,000 in market value, or 1%, of the company's] securities through the date of the meeting." SLB 14 specifies that a shareowner is responsible for providing the company with a written statement that he or she intends to continue holding the shares through the date of the shareowner meeting. See Section C.1.d., SLB 14. SLB 14 provides:

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 3, 2010
Page 5

Should a shareholder provide the company with a written statement that he or she intends to continue holding the securities through the date of the shareholder meeting?

Yes. The shareholder must provide this written statement regardless of the method the shareholder uses to prove that he or she continuously owned the securities for a period of one year as of the time the shareholder submits the proposal.

The Staff consistently has concurred in the exclusion of shareowner proposals submitted by proponents who, as here, have failed to provide the requisite written statement of intent to continue holding the requisite amount of shares through the date of the shareowners' meeting at which the proposal will be voted on by shareowners. For example, in *Sempra Energy* (avail. Jan. 21, 2009), the Staff concurred that the company could exclude a shareowner proposal where the proponents failed to provide a written statement of intent to hold their securities in response to the company's deficiency notice. *See also Fortune Brands, Inc.* (avail. Apr. 7, 2009); *Rite Aid Corp.* (avail. Mar. 26, 2009); *Exelon Corp.* (avail. Feb. 23, 2009); *Fortune Brands, Inc.* (avail. Feb. 12, 2009); *Washington Mutual, Inc.* (avail. Dec. 31, 2007); *Sempra Energy* (avail. Dec. 28, 2006); *SBC Communications Inc.* (avail. Jan. 2, 2004); *IVAX Corp.* (avail. Mar. 20, 2003); *Avaya, Inc.* (avail. July 19, 2002); *Exxon Mobil Corp.* (avail. Jan. 16, 2001); *McDonnell Douglas Corp.* (avail. Feb. 4, 1997) (in each case the Staff concurred in the exclusion of a shareowner proposal where the proponents did not provide a written statement of intent to hold the requisite number of company shares through the date of the meeting at which the proposal would be voted on by shareowners).

As with the proposals cited above, the Proponent has failed to provide the Company with a written statement of her intent to hold the requisite amount of Company shares through the date of the 2011 Annual Meeting as required by Rule 14a-8(b) despite the Company's timely Deficiency Notice. Accordingly, we ask that the Staff concur that the Company may exclude the Proposals under Rule 14a-8(b) and Rule 14a-8(f)(1).

III. The Proposals May Be Excluded Under Rule 14a-8(c) Because The Proponent Exceeded The One-Proposal Limitation.

The Company may exclude the Proposals from the 2011 Proxy Materials under Rule 14a-8(c), which provides that "each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting." When it adopted the one-proposal limitation in 1983, the Commission noted that the purpose of the limitation is "to reduce issuer cost and to improve the readability of proxy statements." Exchange Act Release No. 20091 (Aug. 16, 1983). Exchange Act Release No. 12999 (Nov. 22, 1976).

GIBSON DUNN

Office of Chief Counsel
Division of Corporation Finance
December 3, 2010
Page 6

The Staff consistently has stated, in instances similar to these, that under Rule 14a-8(c), a proponent may submit no more than one proposal for inclusion in a company's proxy materials with respect to the same meeting. For example, in *Proctor & Gamble Co.* (avail. Aug. 8, 2007) a shareowner proponent submitted two proposals for inclusion in the company's proxy materials. The company notified the proponent that he was permitted to submit only one proposal under Rule 14a-8(c), but the proponent did not cure this deficiency. The Staff concurred that the company could exclude both proposals because the proponent failed to withdraw one of the proposals. See also *Streamline Health Solutions Inc.* (avail. Mar. 23, 2010); *PG&E Corp.* (avail. Mar. 11, 2010); *Noble Romans Inc.* (avail. Mar. 12, 2010); *Hanesbrand Inc.* (avail. Dec. 11, 2009); *Alaska Air Group Inc.* (avail. Apr. 8, 2009); *Duke Energy Corp.* (avail. Feb. 27, 2009) (in each case concurring with the exclusion of all the proposals submitted by the same proponent who failed to timely reduce the proposals to one after being notified by the company of the deficiency).

As with the proposals cited above, the Proponent has failed to withdraw one of the Proposals despite the Company's timely Deficiency Notice. Accordingly, we ask that the Staff concur that the Company may exclude both the Proposals under Rule 14a-8(b) and Rule 14a-8(f)(1).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposals from its 2011 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject.

If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Lori Zyskowski, the Company's Corporate and Securities Counsel, at (203) 373-2227.

Sincerely,



Ronald O. Mueller

Enclosure(s)

cc: Lori Zyskowski, General Electric Company
Angelina Iannacone

Exhibit A

Charaloldan PROPOSAL 11/1/10 HEAD LEGAL COUNSEL

I propose that the BOARD OF DIRECTORS IMMEDIATELY ask for the resignation of CEO JEFFREY IMMALT and BEGIN A SEARCH FOR A NEW CEO. STARTING WITH JIM MULLALLY of FORD MR. IMMALT'S RECORD SINCE taking over for Mr. Welch IS MEDIOCRE AT THE VERY LEAST AND THAT'S PUTTING IT MILDLY. REASONS 1. CR HAS LOST ITS TRIPLE A. RATING THE DIVIDEND HAS BEEN SLASHED, THE STOCK PRICE IS CURRENTLY TRADING AT APPROX ONE-THIRD OF ITS ALL-TIME HIGH OF 53 CENTS ABOUT 10 YEARS AGO, ITS REVENUE KEEPS ON DETRIORATING AND THE MOST SIGNIFICANT REASON FOR THAT IS THAT MR. IMMALT HAS LOST HIS CREDIBILITY AMONG THE INVESTMENT COMMUNITY. THE BOARD SHOULD ACT SWIFTLY AND IN NOT DOING SO, WOULD SERIOUSLY VIOLATE ITS DUTY IN ACTING IN THE BEST INTERESTS OF ITS SHAREHOLDERS.

Mrs Angelina, Jannacone

SHAREHOLDER PROPOSAL: 11/1/10 Hon Legal Counsel
G.E. HAS A VERY STRONG CASH POSITION
AT THE CURRENT TIME, SO I PROPOSE
THAT THE BOARD OF DIRECTORS APPROVE
A DUTCH TENDER OFFER FOR 20% OF
ITS SHARES OUTSTANDING AT APPROXIMATELY
18. - 18.50 A SHARE, REMOVING 20% OF
ITS SHARES OUTSTANDING WHICH WILL
BENEFIT THE CURRENT SHAREHOLDERS, BY
IMPROVING ITS EPS FOR FUTURE QUARTERS
WITH INTEREST RATES AT CURRENT LEVELS
THE COST OF BUYING ITS SHARES BACK
AGGRESSIVELY MAKES SENSE, IT ALSO
COVERS PAYING OUT DIVIDENDS ON
2 BILLION SHARES.

Mrs. Australia TAMACONE

Exhibit B



Lori Zyskowski
Corporate & Securities Counsel

General Electric Company
3135 Easton Turnpike
Fairfield, CT 06828

T 203 373 2227
F 203 373 3079
lori.zyskowski@ge.com

November 12, 2010

VIA OVERNIGHT MAIL
Anaelina Iannacone

FISMA & OMB Memorandum M-07-16

Dear Ms. Iannacone:

I am writing to confirm that we have received the two shareowner proposals you submitted to General Electric Co. (the "Company"). We received your proposals on November 2, 2010 and will forward them internally for careful consideration.

We note that it is unclear from your letters whether you were submitting your proposals pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 or pursuant to the advance notice provisions of the Company's By-Laws, as described on pages 50 and 51 of our 2010 Proxy Statement (copies of which are attached). If you were submitting your proposals pursuant to Rule 14a-8, please note that there are a number of procedural deficiencies that we would like to bring to your attention. In particular: (1) you must provide us with proof of your ownership of Company shares for at least one year as of the date you submitted your proposals, (2) you must provide us with a statement that you intend to hold the requisite number of Company shares through the date of our 2011 Annual Meeting of Shareowners, and (3) you are only permitted to submit one shareowner proposal for each shareowners' meeting.

1. Proof of Continuous Ownership

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), provides that shareowner proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareowner proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that your proposals were submitted to the Company.

To remedy this defect, you must submit sufficient proof of your ownership of the requisite number of Company shares as of the date that your proposals were submitted to the Company. As explained in Rule 14a-8(b), sufficient proof may be in the form of:

- a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, as of the date your proposals were submitted, you continuously held the requisite number of Company shares for at least one year; or

- if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of Company shares for the one-year period.

2. Intent to Hold Shares

Under Rule 14a-8(b) of the Exchange Act, a shareowner must provide the Company with a written statement that he or she intends to continue to hold the requisite number of shares through the date of the shareowners' meeting at which the proposal will be voted on by the shareowners. To remedy this defect, you must submit a written statement that you intend to continue holding the requisite number of Company shares through the date of the Company's 2011 Annual Meeting of Shareowners.

3. Multiple Proposals

Pursuant to Rule 14a-8(c) under the Exchange Act, a shareowner may submit no more than one proposal to a company for a particular shareowners' meeting. You submitted two proposals to the Company. You can correct this procedural deficiency by indicating which proposal you would like to submit and which proposal you would like to withdraw.

* * *

The SEC's Rule 14a-8 requires that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06828. Alternatively, you may transmit any response by facsimile to me at (203) 373-3079.

If you were providing notice pursuant to the advance notice provisions of the Company's By-Laws, please note that you are required to comply with Article VII of the Company's By-Laws.

If you have any questions with respect to the foregoing, please contact me at (203) 373-2227. For your reference, I enclose a copy of Rule 14a-8 and a copy of the Company's By-Laws.

Sincerely,



Lori Zyskowski

Enclosures

Shareholder Proposals – Rule 14a-8

§240.14a-8.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) **Question 1: What is a proposal?**

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) **Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?**

- (1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
- (2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
 - (i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
 - (ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:
 - (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
 - (B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
 - (C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) **Question 3: How many proposals may I submit?**

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) **Question 4: How long can my proposal be?**

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) **Question 5: What is the deadline for submitting a proposal?**

- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter) or 10-QSB (§249.308b of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

- (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and mail its proxy materials.
- (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and mail its proxy materials.
- (f) **Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?**
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).
- (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) **Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?**
Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- (h) **Question 8: Must I appear personally at the shareholders' meeting to present the proposal?**
- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
- (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
- (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- (i) **Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?**
- (1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;
Note to paragraph (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.
- (2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;
Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.
- (3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

- (5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
 - (6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;
 - (7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;
 - (8) *Relates to election*: If the proposal relates to an election for membership on the company's board of directors or analogous governing body;
 - (9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;
Note to paragraph (1)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.
 - (10) *Substantially implemented*: If the company has already substantially implemented the proposal;
 - (11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
 - (12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:
 - (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
 - (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
 - (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
 - (13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.
- (j) **Question 10: What procedures must the company follow if it intends to exclude my proposal?**
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
 - (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- (k) **Question 11: May I submit my own statement to the Commission responding to the company's arguments?**
Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.
- (l) **Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?**
- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
 - (2) The company is not responsible for the contents of your proposal or supporting statement.
- (m) **Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?**
- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote

against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
- (3) We require the company to send you a copy of its statements opposing your proposal before it mails its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
 - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before it files definitive copies of its proxy statement and form of proxy under §240.14a-6.