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August 17, 2009

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

Dear Ms. Murphy

Texas Instruments Incorporated ("TI") appreciates the opportunity to comment on the Commission's proposal to require companies to include stockholder nominees for director in company proxy statements under certain conditions (the "Proposed Rules"). TI has a long history of responsible corporate governance. Our board first adopted written governance guidelines in 1973 and has had a majority of independent directors since 1984. We view the Proposed Rules through the long lens of our governance experience.

In summary, we believe:

- The economic crisis does not justify broad implementation of proxy access.
- State law is sufficient to address the objectives of the Proposed Rules.
- The SEC should postpone action on the Proposed Rules until the results of recent regulatory and governance changes can be determined.
- If the SEC nonetheless decides to adopt final rules at this time, changes should be made to the Proposed Rules to limit their adverse effects.

We discuss these points below.

The economic crisis does not justify broad implementation of proxy access. In discussing the rationale for the Proposed Rules, the Commission points primarily to the current economic crisis and cites a perceived lack of accountability at boards of directors as a contributing factor, particularly in regard to compensation structures and risk management. We note that much has been made of compensation structures in the financial industry that rewarded short-term gains at the expense of the long-term health of the organization. While the exact causes of the economic crisis remain subject to debate, it is the financial industry that has drawn the most focus. Yet the Commission proposes a one-size-fits-all approach for all public companies regardless of their industry or role in the crisis. Furthermore, the chief rationale identified by the Commission to justify the Proposed Rules (i.e., the current economic crisis) is not mitigated or addressed by the proposed solution. In addition, efficient board functioning will be constrained as it is likely that persons elected by means of proxy access will have narrow agendas and consider themselves to have narrow constituencies.

Rather than impose proposed Rule 14a-11 on all public companies, we urge the Commission to allow recent regulatory and governance changes to play out. Stockholders for each company should be allowed to determine the nominating process that works best.

<u>State law is sufficient to address the objectives of the Proposed Rules.</u> Directors are subject to well-established fiduciary duties under state law. These laws provide remedies to stockholders who seek to hold boards accountable for failures to act responsibly. We believe that it would be preferable to rely on these remedies to address the underlying accountability concerns the Commission has identified rather than institute a fundamental change to the proxy process.

Furthermore, we note that Delaware has adopted legislation that would expressly permit companies to adopt proxy access bylaws. To the extent stockholders believe proxy access is desirable, laws such as Delaware's will allow companies to address these concerns in a way that is appropriate to their specific circumstances. We believe that such a "private ordering" approach will produce a better result for companies and their stockholders than to mandate minimum standards for proxy access at all companies, as provided in the Proposed Rules. We urge the Commission to allow for private ordering in this area. A prime example of successful private ordering is majority voting. As noted in the Proposed Rules, majority voting has gained widespread acceptance among a significant number of companies, a development that transpired over a fairly limited time frame.

<u>The SEC should postpone action on the Proposed Rules until the results of recent regulatory and governance changes can be determined</u>. There have been recent, fundamental changes in the director election process that will have a significant impact on future elections. They include the voluntary implementation of majority voting at a significant number of companies, including ours, and the elimination of broker discretionary voting for directors, which will likely result in a significant reduction in the number of "for" votes cast in director elections. In our view, with these changes stockholders already have very meaningful methods for affecting director nominations and elections. Add to that the Commission's commendable implementation of e-proxy, which greatly reduces the expense involved in soliciting proxies, and it is difficult to see how the costs and distraction of annual proxy contests, which is what the Proposed Rules would essentially facilitate, outweigh the benefits of allowing existing rules and

processes to continue to work. This is particularly the case with respect to the Rule 452 amendment, the impact of which will not be known until the 2010 proxy season.

As the Commission acknowledges in its proposing release, proxy access could be very disruptive to boards' operations; annual proxy contests would be an enormous diversion of resources at a time when boards should be focusing on competing in the current economic climate. We suggest that now is not the time to implement proxy access. We urge that proposed Rule 14a-11 not be adopted but that stockholders be allowed to use amended Rule 14a-8 (with such further revisions as we suggest below) to tailor to each corporation the proxy access approach they deem appropriate.

<u>If the SEC nonetheless decides to adopt final rules at this time, changes should be made to the Proposed Rules to limit their adverse effects</u>.

A. Implementation of proxy access could result in what are essentially annual proxy contests. Such contests will require a significant amount of board and management time, not to mention expense. We submit that a small minority of stockholders should be not able to dictate to a larger majority how a company's assets must be expended. This rationale underlies a number of comments we have on the Proposed Rules:

<u>Require a triggering event rather than apply Rule 14a-11 equally to all companies from the start</u>. We believe the Proposed Rules could undermine a board's ability to conduct its business. Having an antagonistic director, as would be likely for a stockholder-nominated director, would be a tremendous distraction for the board. Management might not be able to obtain clear direction from the board or obtain it in time to act. In turn, the company's performance could be negatively affected, and as a result, the stockholders would be harmed. Consequently, we believe it is only responsible to require proxy access only at those companies at which a specified triggering event occurs that clearly indicates widespread stockholder displeasure with the board. Otherwise, the Proposed Rules would permit a small minority of stockholders to force corporate assets to be used to facilitate a proxy contest that the current rules already permit, albeit at the expense (a lessened expense, due to the e-proxy rules) of the small minority. We find merit in the following as potential triggering events:
--Failure of a director to obtain a majority vote "for" or, for companies that haven't implemented majority voting, receipt by a nominee of withhold votes from more than 50% of the votes cast at an annual meeting of stockholders (unless in either case the director resigns within a reasonable time following the meeting).
--The triggering event proposed by the Commission in 2003 relating to a successful stockholder proposal relating to proxy access (including the stock ownership requirements that were then proposed).
In each case, the triggering event should result in a period of no more than one-year during which Rule 14a-11 could be used.

Increase the ownership threshold required to submit a nomination under Rule 14a-11. Before imposing the costs and distraction of the proxy access mechanism on a large majority of stockholders that may not think it necessary, we think the Commission should increase the ownership threshold required to submit a nomination. A threshold of 15 percent, whether reached by an individual stockholder or through aggregation, would signify that a large enough portion of stockholders are displeased. Otherwise, a company once again could have a small minority of investors determining how corporate assets should be expended.

Require a two-year, net long holding period prior to a nomination under Rule 14a-11 and submission of a proposal under Rule 14a-8(i)(8) and impose a post-election ownership requirement. We believe two years of a non-hedged position is an appropriate demonstration of a stockholder's commitment to a company's long-term health. We believe only stockholders with such an interest should be permitted to nominate director candidates. Moreover, we believe it appropriate to require that a nominator indicate in its initial notice its intent to continue to satisfy the ownership requirement through the term of the nominator's candidate's tenure. Absent this requirement, a nominating stockholder could liquidate its holdings at the time of the election and avoid the economic consequences other stockholders will experience as a result of the nominating stockholder's actions.

B. Require nominees to meet the company's independence criteria and other eligibility requirements. Investors rightly view strong, independent directors as a safeguard for their investments. The national securities exchanges set minimum independence criteria for directors of listed companies, and also allow companies to set independence standards that are even more stringent. It is ironic that the Commission is now moving to undermine the advances made in this area by permitting the nomination of directors who do not meet the company's independence criteria. This could place a hardship on companies such as Texas Instruments that do not have large boards to begin with and that have only the three core committees—audit, compensation and nominating—required by, in our case, the New York Stock Exchange. We would be faced with having a director who could not serve on any committee, thereby increasing the workload for the other independent directors and the risk that boards will increase in size simply to staff the core committees.

In addition, many companies have adopted a mandatory retirement age for directors or have limited the number of other public-company boards on which their directors may serve. We see no reason these other eligibility criteria should not apply equally to a nominating stockholder's candidate.

C. Commit to an "incremental" approach. On page 75 of the Proposed Rules the Commission states that given the novelty of the change under consideration, the

Commission believes "it is appropriate to take an incremental approach" to proxy access. We agree that an incremental approach is prudent. To that end, and to minimize the impact of the independence issues raised above, we advocate limiting the number of directors that can be nominated via proxy access to one per year, regardless of the size of the company.

D. Defer to the largest shareholder(s). The Commission proposes that nominations be given priority on a first to file basis. We believe the better approach is to prioritize according to the investment at stake, as was proposed in the 2003 proposing release. This is consistent with the view we express elsewhere in this letter that the voice of stockholders with the larger amount at stake should take priority.

E. Base the timeframe for no-action letter process on SEC-determined date. TI's advance notice by-law sets a deadline of 90 days in advance of the anniversary of the prior year's annual meeting (not mailing) date. It is unclear whether an advance notice by-law that provided for a longer period of time would be upheld by a Delaware court. If TI wished to file a no-action request under the proposed process, it would be required to file such request before the deadline for nominations has passed. To eliminate confusion among investors as to the appropriate deadline for each company, we believe it is appropriate for the Commission to mandate a specific deadline that applies to all, such as the deadline of 120 days before anniversary date of proxy mailing for prior year contained in the Proposing Release. In addition, to ensure that investor concerns that might prompt a nomination are based on current circumstances and not, for example, a months-old issue that has since been addressed, we also advocate a maximum deadline for the submission of nominations, and would support the "no more than 150" day limit mentioned in the Proposed Rules. This would have the added benefit of concentrating to a narrow window the time that a board might have to attend to this very distracting matter.

In addition to the comments contained herein, we refer you to the concerns and opinions expressed in the comment letter submitted by The Business Roundtable on this topic, which we endorse.

If you have any questions or would like to discuss these comments, please call me at 214-480-6030.

Very truly yours

Joseph F. Hubach
Senior Vice President, Secretary
and General Counsel