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Ms. Elizabeth M. Murphy
Secretary, U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via e-mail: rule-comments@sec.gov

Re: Proposed Rule Regarding Shareholder Director Nominations, File No. S7-10-09

Dear Ms. Murphy:

On behalf of The Boeing Company, thank you for this opportunity to comment on the Securities and Exchange Commission's (SEC) proposal regarding shareholder director nominations. We appreciate the SEC's thoughtful and thorough consideration of the appropriate role of the federal proxy rules in the exercise of shareholder rights to nominate and elect directors under state law.

Boeing is one of the largest and most diversified aerospace companies in the world, serving customers in more than 100 countries and employing nearly 160,000 people. In 2008, Boeing had consolidated revenues of approximately $60 billion. Boeing firmly believes that its achievements as a leader in highly competitive global markets and in technological innovation result in no small measure from its long-standing commitment to sound corporate governance practices, including the independent and experienced leadership on its board of directors.

We are writing to express our opposition to the SEC's proposed Rule 14a-11. We do not believe that imposing a uniform and rigid federal proxy access regime on all public companies is necessary or advisable. In fact, for the reasons described below, we believe that the SEC's proposal presents a very real threat of counterproductive overregulation which could have serious consequences for competition and public companies of all sizes and industries. As discussed further below, we do support an alternative approach that would amend Rule 14a-8 to allow shareholder proposals relating to the director election process.

The Proposed Proxy Access Rules Are Not Necessary

Proxy access is an issue that has the potential to significantly undermine the long established, widely accepted and highly successful model of corporate leadership and oversight that is a core strength of this country's economic system. The proposed rules would substitute the SEC's judgment for that of shareholders, boards of directors and state legislatures by imposing proxy access on all public companies and their shareholders. This one-size-fits-all approach to proxy access is particularly inappropriate at this time because shareholders and companies would be denied the opportunity to consider more customized proxy access procedures (e.g., ownership thresholds and holding periods) that recently-enacted Delaware law expressly permits.

Clearly, in recent years there has been a major shift in corporate governance. Examples of this are the movement toward majority voting in uncontested director elections with nearly 70% of the S&P 500 adopting majority voting principles in a relatively short period of time, and the fact that most companies now have a very high percentage of independent directors. At Boeing, nine of our ten directors are independent. Our board is very active and engaged in an ongoing and continuous effort to anticipate and address the concerns of the company's shareholders. In the past several years Boeing has implemented annual director elections, adopted majority voting in director elections, eliminated supermajority voting provisions from our charter, and appointed an independent Lead Director. These measures were instituted in part as a result of constructive input from our shareholders and are intended to ensure that the Boeing board is positioned to act in the best interests of the company's shareholders as a whole -- not the special interests of a select or small group of shareholders.

Boeing's experience, and that of many other U.S. companies, demonstrates that public companies and their stakeholders are able to strengthen board accountability and reshape governance policy without the impetus of inflexible federal regulatory mandates. There already exist other channels for shareholder participation and input to companies, including the shareholder proposal process and "vote no" campaigns for director elections. The proposal presumes that shareholders are not able to develop a customized proxy access model for individual companies. We disagree with this presumption and believe that shareholders and public corporations are best situated to strike the appropriate balance in corporate governance matters through private ordering as they have done many times before. Moreover, a federally-mandated uniform rule for proxy access would deny shareholders options that Delaware law now expressly permits (e.g. ownership thresholds and holding periods) to appropriately tailor proxy access.

The Proposed Proxy Access Rules Will Have Serious Adverse Consequences

The SEC proposal will establish different legal standards for shareholders and the boards of directors responsible for acting in their interest. Specifically, the proposed proxy access rules fail to recognize the legal requirements and fiduciary duties applicable to boards of directors and their nominating committees which require consideration of a director nominee's expertise, experience and independence. Shareholders will not have similar requirements under the proposed rules, which would create the risk that nominated directors may not be motivated to act in the best interests of all stockholders, pursuing instead narrow special interests. Moreover, the overall effectiveness of the board of directors will likely suffer if a shareholder nominee defeats an incumbent candidate with particular expertise or experience (e.g. prior service on the audit committee or specialized industry expertise) that is desirable for the board as a whole.

At Boeing we have had the opportunity to observe our board of directors carefully screen, review and select nominees to stand for election by the company's shareholders. It should come as no surprise that the board believes that the selection and nomination of directors is one of its most important duties. The process is time-consuming and

requires the board to engage in a great deal of extended due diligence. At Boeing our Governance, Organization and Nominating Committee, composed entirely of independent directors, oversees this important process. It can take months or even years for the Committee to identify, recruit and nominate a new, qualified director to stand for election before shareholders. This careful and thoughtful review is intended to determine whether the prospective nominee will represent the best interests of all the company's shareholders and add value to the mix of talent and experience that constitutes the board. As would seem apparent, many shareholders are not generally in a position to engage in the same level of review and assessment to identify candidates who meet the broader needs of boards or the companies they represent.

Shareholders currently have the ability to nominate director candidates, of course, through the well-established proxy contest process. The concern most frequently expressed with proxy contests is that nominating shareholders must incur significant expense in order to pursue them. Creating a federal proxy access right in the manner proposed, however, could turn every director election into a contentious proxy contest, thereby politicizing the director election process. This would be tremendously disruptive to the company and expensive to shareholders as a whole. Annual proxy contests would also strongly discourage board service and impair the company's ability to attract and retain highly qualified directors. Finally, we are concerned that the resources available to the SEC may be insufficient to handle the large number of election disputes that would arise if the SEC's proposed proxy access rules are adopted.

<u>If the Commission Adopts the Proposed Proxy Access Rules, Extensive Revisions Are Imperative</u>

Assuming that the SEC proceeds to establish a federal right of proxy access, it is imperative that the SEC address the following important points in its final rule:

- "Triggering events" before a right of proxy access arises (e.g. not acting on a shareholder proposal that received a majority shareholder vote for two consecutive years; or, for companies that have adopted majority voting, not accepting the resignation of a director who received less than a majority of the votes cast). Triggering events should not include economic performance or an earnings restatement because such events may have little or no relationship to a governance shortcoming.

- Rigorous eligibility criteria for shareholders who submit board nominees (e.g. a two year holding period and minimum stock ownership of 5% of outstanding shares for an individual and 10% for a group). The SEC proposal of 1% aggregated is far too low and will only encourage the efforts of some shareholder groups to pursue narrow special interests.

- Limitations on a shareholder's ability to nominate proxy access directors for some period of time (e.g. three years if the shareholder's proxy access nominee fails to receive a significant percentage of votes cast -- such as 35%).

- Eligibility criteria for shareholder nominees, including who determines the independence of a shareholder nominee and how it is determined, as well as the role of the nominating committee of the board in reviewing and assessing the independence and qualifications of the nominee.

- Reductions in scope for the proxy access right (e.g. limits on the number or percentage of nominees for director that can be proposed by shareholders for any given election -- such as, 10% or one nominee). The SEC proposal of 25% is far too high.

- In the case of multiple 14a-11 nominations, the nomination of the largest shareholder or group of shareholders holding shares for the longest period of time should prevail. Granting priority to the first eligible nominee submitted, as set forth in the proposed rule, is an unworkable standard.

- That the board has a fiduciary duty to consider and recommend for election those nominees whom it believes will act in the best interests of shareholders and the company, while a nominating shareholder has no comparable duty. Importantly, proxy access nominees should not be affiliated with the nominating shareholder(s).

Without these changes, which mitigate but do not fully address the many concerns with the proposed rule identified by this and many other companies, we are deeply concerned that the effects of the rule will be detrimental to U.S. companies and U.S. competitiveness.

There are many other implementation issues raised by the proposed rule. For example, companies will need sufficient time and information to determine if the election of a proxy access nominee will trigger issues under laws and regulations relevant to the company's businesses, including those relating to the antitrust laws, government procurement, security clearances and export control. It is unlikely that these matters can be fully and finally determined, particularly if there is more than one nominee in the 14-day period provided by the proposed rule for companies to notify nominating shareholders of their objections to the eligibility of nominees submitted. Nor does the proposed rule address what is required if there is a change in circumstances regarding the ability of shareholder and/or its nominee to meet the applicable eligibility requirements either between the date of submission of a nominee and the annual meeting or subsequent to the election of a proxy access nominee to the board.

In addition, companies should be permitted in their proxy solicitation materials to clearly distinguish between statements of the company and statements of a nominating shareholder. The rule should also eliminate the imposition of any liability on companies for information that it did not prepare and that it is required to include in its proxy materials in connection with a shareholder nominee. The rule should allow a shareholder to vote for all company nominees for director as a group, and allow a company to determine the future status of a proxy access nominee who is elected as a director (i.e. does the status of the shareholder nominee as an access director change if re-nominated for a second term?). Taken as a whole, the volume

and magnitude of implementation issues further suggests that shareholders and companies should have an opportunity to develop customized solutions.

The SEC Should Instead Adopt a Modified Version of its Proposed Amendment to Rule 14a-8(i)(8)

As an alternative to proposed Rule 14a-11, the amendment of Rule 14a-8(i)(8) would enable the determination of the electoral process framework best suited to the needs of individual companies and their shareholders. In fact, permitting proxy access shareholder proposals without mandating federal proxy access would achieve several of the SEC's stated objectives, including removing impediments to shareholder use of state law rights, continuing the long-established tradition of addressing corporate governance at the state level through private ordering by shareholders, and providing the flexibility for boards and shareholders to determine a customized structure of proxy access (e.g. eligibility, disclosure, ownership requirements, etc., best suited for their companies).

However, any amendment to Rule 14a-8(i)(8) should set higher minimum ownership thresholds than required for other shareholder proposals ($2,000) given that such a proposal could result in fundamental change at a company. Only shareholders with a significant long-term ownership interest in the company should be permitted to make a proposal under a revised 14a-8(i)(8). Accordingly, we recommend that the SEC increase the minimum eligibility threshold to 2% of a company's outstanding shares for a proxy access shareholder proposal.

Conclusion

As you know, the SEC seeks comments on almost 500 specific questions in its notice of the proposed rule, reflecting that the SEC appreciates the complexity of this matter. With hundreds of important questions to answer, the SEC should not rush to adopt a preemptive one-size-fits-all rule in response to external pressures or based on incomplete and inaccurate data. Based on the recent experience with majority voting, companies should be allowed an opportunity to consider recent state legislation and tailor an approach that will afford their shareholders enhanced nominating powers without the unintended consequences that a proscriptive proxy access regime is likely to have on America's public corporations and U.S. competitiveness.

Finally, if the SEC remains determined to proceed to adopt the proposed rule despite the significant concerns expressed in this and other comment letters, the SEC should delay the effective date until the 2011 proxy season in order for companies to have sufficient time to amend their bylaws and take other preparatory actions.

Sincerely,

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VP, Assistant GC and Corporate Secretary
The Boeing Company

cc: Mary L. Schapiro, Chairman
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