

November 16, 2010

Ms. Elizabeth M. Murphy  
Secretary, U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Proposed Rule Regarding Shareholder Approval of Executive Compensation and Golden Parachute Compensation, File No. S7-31-10

Dear Ms. Murphy:

On behalf of The Boeing Company ("Boeing" or the "Company"), thank you for this opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed rules regarding shareholder approval of executive compensation and golden parachute compensation described in Release Nos. 33-9153 and 34-63124 (collectively, the "Release"). 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.

This letter sets forth a number of comments to the Release. Our comments focus on the proposals relating to the periodic shareholder votes on executive compensation, and not those relating to shareholder votes on golden parachutes. We recognize, of course, that the Release was issued as a step toward implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a result, we offer our comments to the Release with the dual objectives of protecting the long-term interests of our shareholders as well as promoting the purposes of greater transparency and shareholder engagement set forth in the relevant provisions of the Dodd-Frank Act. Our comments generally relate to the following issues:

- First, we suggest that if the Commission does not require specific language in connection with the shareholder vote on executive compensation, it should propose language that, if adopted, would preclude subsequent regulatory or shareholder challenge.
- Second, we set forth our concerns with respect to the proposed mandatory Item 402(b) disclosures regarding how the results of past shareholder advisory votes impacted compensation decisions.





- Third, we address whether specific language should be required in connection with the shareholder vote on frequency. Our position on this issue mirrors that which we set forth above with respect to the Release’s similar proposal with respect to the advisory vote on executive compensation.
- Fourth, we recommend that the scope of shareholder proposals subject to exclusion pursuant to Rule 14a-8 be expanded to the extent that issuers abide by the Commission’s final rules.
- Finally, we set forth our views with respect to the proposed Exchange Act disclosure requirements regarding issuer indications of intent with respect to shareholder vote frequency.

The references to the “Requests for Comment” below are to the specific requests for comment set forth in the Release.

### **Comments to the Proposed Rules**

#### **A.1. Proposed Rule 14a-21(a)**

*Request for Comment #1: Should we include more specific requirements regarding the manner in which issuers should present the shareholder vote on executive compensation? For example, should we designate the specific language to be used and/or require issuers to frame the shareholder vote to approve executive compensation in the form of a resolution? If so, what specific language or form of resolution should be used?*

We believe that the purposes of the Dodd-Frank Act are best served by the adoption of clear standards for the presentation and wording of the shareholder advisory vote on executive compensation. Consistent presentation by all issuers will facilitate comparability among industry peers and help investors—many of whom will need to evaluate say-on-pay votes at multiple companies—cast informed votes. Issuers will also benefit from the certainty achieved by knowing that a particular presentation complies with the Commission’s requirements. That said, we believe that this consistency can be achieved without mandating one formulation, but instead by providing example formulations that constitute a non-exclusive safe harbor for compliance with the Commission’s requirements as set forth in the Release.

#### **A.3. Proposed Amendments to Item 402(b) of Regulation S-K**

*Request for Comment #6: Should we amend Item 402(b) to require disclosure of the consideration of the results of the shareholder advisory vote on executive compensation in CD&A as proposed? If not, please explain why not.*



As stated in the Compensation Discussion and Analysis (“CD&A”) section of Boeing’s 2010 Proxy Statement, our executive compensation program “is designed to promote a strong culture of leadership development, aligned with performance improvement (focused on both growth and productivity) and integrity, which in turn drives financial performance that provides value to our stakeholders.” In order to implement this strategy, Boeing relies on a wide variety of qualitative and quantitative inputs from a number of sources, including company financial information, internal performance reviews, data regarding peer practices, industry trend information, advice from independent compensation consultants and targeted feedback from individual and institutional shareholders as well as the larger communities in which we do business. In that context, identifying and isolating the role played by advisory say-on-pay votes in establishing Boeing’s compensation philosophy or implementing Boeing’s pay practices could be extremely difficult, if not impossible. Boeing believes, therefore, that disclosures regarding the role played by say-on-pay votes should not be mandatory.

If the Release’s proposed amendments to Item 402(b) of Regulation S-K are adopted in their current form, most disclosures would fit into one of two categories. Some companies would say that the say-on-pay votes had no impact on their compensation practices. Others would make clear that, while Company management, the Company’s compensation committee and the committee’s independent compensation consultant each consider the impact of prior say-on-pay votes in future executive compensation decisions, the Company cannot specifically identify any practices or policies that were modified or preserved based specifically on the feedback generated by those votes. Boeing believes that neither type of “boilerplate” disclosure would provide investors with helpful information on the impact of their votes, and might in fact discourage further participation in the advisory vote process.

*Request for Comment #7: Should the requirement to discuss the issuer’s consideration of the results of the shareholder vote be included in Item 402(b)(1) as a mandatory principles-based topic, as proposed, or should it be included in Item 402(b)(2) as a non-exclusive example of information that should be addressed, depending upon materiality under the individual facts and circumstances? In this regard, commentators should explain the reasons why they recommend either approach.*

Notwithstanding our comments to Request for Comment #6, in some cases the feedback provided through a say-on-pay vote could supplement the voices described above, particularly in conjunction with healthy, ongoing dialogue with shareholders. In some of those cases, say-on-pay vote results could have a discernible effect on compensation decisions. For example, a steep increase (or decrease) in “yes” totals following a policy change may encourage us to reexamine or reinforce a policy change and/or engage in follow-up discussions with shareholders. In such a case, an issuer should consider disclosing that fact in its CD&A. To that end, we endorse the Release’s alternative suggestion, that a discussion of an issuer’s consideration of say-

on-pay vote results be included as a non-exclusive example of information that may be addressed, depending on materiality and relevance.

The Release's alternative suggestion will encourage issuers to consider the impact of say-on-pay votes on future compensation decisions, but will not force issuers into a "one-size-fits-all" disclosure requirement. Boeing, like many other issuers, continues to hear concerns from shareholders about the increasing size of proxy statements (and the CD&A in particular). As a result, Boeing believes that its shareholders would not want additional required disclosure without regard to materiality or relevance. Rather, issuers should be permitted to disclose such considerations in as much or as little detail as it believes satisfy the CD&A's purpose and/or otherwise assists investors.

*Request for Comment #8: Should the proposed requirement for CD&A discussion of the issuer's consideration of previous shareholder advisory votes be revised to relate only to consideration of the most recent shareholder advisory votes?*

Issuers' voluntary disclosures in this regard should not be limited to considerations related to the most recent vote. It is conceivable, for example, that issuers draw more accurate conclusions on shareholder sentiment only after analyzing multiple say on pay votes, including how different votes may have been influenced by different factors under different circumstances. For companies like Boeing without an institutional history of say-on-pay votes, compensation decisions may be influenced by these votes more obviously over time, after the company has reviewed multiple vote results. If analysis of those results leads to particular compensation decisions, Boeing's disclosure to that effect should be permitted to discuss all the data considered.

However, in the event that the Commission adopts rules requiring mandatory disclosure along the lines proposed in the Release, issuers should not be required to consider more than the most recent say-on-pay vote. As discussed in our response to Request for Comment #7, it may be very challenging to isolate the impact of the advisory vote results on any future decisions regarding executive compensations. Those challenges will only increase if advisory votes from two, three or more years prior must also be considered independently. Too much time will have passed, and too many subsequent discussions with investors, outside compensation consultants and others will have occurred, for such an analysis to be meaningful in most cases. The result will, once again, be more unnecessary "boilerplate" disclosure.

#### B.1. Proposed Rule 14a-21(b)

*Request for Comment #10: Should we include more specific requirements regarding the manner in which issuers should present the shareholder vote on the frequency of shareholder votes on executive compensation? For example, should we designate the specific language to be used and/or require issuers to frame the shareholder vote on*



*the frequency of shareholder votes to approve executive compensation in the form of a resolution? If so, what specific language or form of resolution should be used?*

As in our response to Request for Comment #1, Boeing wants to provide its shareholders with certainty that the wording of its frequency resolution is compliant with SEC rules and consistent with that of its peers. As a result, the SEC should consider proposing, either in the final rules or subsequently in the form of interpretive guidance, wording that acts as a non-exclusive safe harbor for issuers. In order to further enhance investors' certainty that issuers' proposed wording is appropriate, Rule 14a-8 should be amended to permit the exclusion of shareholder proposals that propose different wording provided that the issuer in the prior year used language suggested by the Commission. See our responses to Requests for Comment #18 and #20 for additional detail on this issue.

#### B.4. Proposed Amendment to Rule 14a-8

*Request for Comment #18: Is the proposed amendment to Rule 14a-8(i)(10) appropriate? Should we, as proposed, allow the exclusion of shareholder proposals that propose say-on-pay votes with substantially the same scope as the votes required by Rule 14a-21(a)? If not, please explain why not.*

Yes, Boeing believes that Rule 14a-8(i)(10) should permit the exclusion of shareholder proposals relating to advisory votes on executive compensation for issuers that are otherwise in compliance with the rules set forth in the Release. Moreover, an issuer's access to Rule 14a-8(i)(10) to exclude proposals that propose say-on-pay votes should not be predicated upon that issuer's adoption of the plurality recommendation on say-on-pay frequency. Please see our response below to Request for Comment #19 for more detail on the impact of the issuer's frequency choice on subsequent shareholder proposals regarding frequency. However, with respect to proposals that relate to additional or duplicative votes themselves, 14a-8(i)(10) should apply without regard to whether the issuer has adopted the plurality's recommendation. If such votes are truly advisory in nature (as the Dodd-Frank Act requires), a failure to adopt the relevant voting recommendations should not constitute a failure to "substantially implement" the Commission's say-on-pay regulations. Further, the consequence to issuers in such a case would be the never-ending "re-litigation" of say-on-pay frequency issues, effectively limiting the Dodd-Frank-mandated six-year cycle only to those issuers who interpreted "advisory" as "binding."

*Request for Comment #19: Should we, as proposed, permit the exclusion of shareholder proposals that seek to provide say-on-pay votes more or less regularly than the frequency endorsed by a plurality of votes cast in the most recent vote required under Rule 14a-21(b), as described above? Are there other circumstances under which shareholder proposals relating to the frequency of say-on-pay votes*



*should be considered substantially implemented and subject to exclusion under Rule 14a-8(i)(10)?*

As described above, Boeing believes that Rule 14a-8 should permit the exclusion of shareholder proposals that seek to provide say-on-pay votes more or less frequently than proposed by company management without regard to the issuer's adoption of the plurality recommendation. If Rule 14-8(i)(10) is not amended to exclude proposals that seek to provide "off-cycle" frequency votes, frequency votes will likely be held on an annual basis at many companies. Under the proposed plurality vote standard, even issuers that adopt the most popular frequency may have well in excess of 50% of shareholders who wish to propose off-cycle frequency votes. As a result, the frequency vote may end up on issuer ballots more often than the say-on-pay votes themselves, truly a case of the tail wagging the dog.

Provided, however, that the Commission does condition issuers' access to Rule 14a-8(i)(10) exclusions on "compliance" with the advisory vote recommendations, it should permit the exclusion of such shareholder proposals even if the issuer has adopted a frequency contrary to that which received plurality support in the most recent frequency vote, provided that the Company provides a reasonable basis for the belief that it has adopted a frequency consistent with shareholder preference. It is not clear that, among three choices plus an option to abstain, plurality is the sole method to assess shareholder preference. For example, if shareholders' preference is split 34% for an annual vote and 33% each for a biennial and triennial vote, an issuer may determine that a biennial vote best reflects overall shareholder preference. As a result, issuers should be permitted to choose any frequency that is reasonably believed to more accurately reflect shareholder preference. The basis for such a belief may come from subsequent shareholder engagement, changes to the issuer's shareholder base since the last frequency vote, and/or other factors. In such a case, Rule 14a-8 should permit the exclusion of subsequent shareholder votes on frequency.

*Request for Comment #20: Should we amend Rule 14a-8(i)(10) to address other specific factual scenarios that are likely to occur as a result of the implementation of Section 951 and our related rules? Are there other specific facts and circumstances under which Rule 14a-8(i)(10) should permit or prohibit the exclusion of shareholder proposals that seek say-on-pay votes?*

Yes. In addition to excluding shareholder proposals relating to additional or more frequent advisory votes on executive compensation, Rule 14a-8(i)(10) should exclude shareholder proposals that propose say-on-pay votes with narrower scope as that required by Rule 14a-21(a). One of the benefits to investors of the proposed rules is the certainty and consistency afforded by one set of advisory votes across companies. This consistency will allow shareholders to deliver targeted feedback to issuers on a topic of great importance. To that end, Boeing respectfully requests that the Commission consider additional exclusions pursuant to Rule 14a-8(i)(10), particularly



the exclusion of proposals that ask for additional, more specific votes on executive compensation, either those that attempt to hone in on particularly aspects of executive compensation or that wish to make the result of such votes binding in any respect.

First, provided that an issuer otherwise complies with the rules on shareholder advisory votes, including usage of approved wording for the advisory vote on executive compensation, Boeing believes that issuers should be permitted to exclude proposals that would ask for additional votes approving, *e.g.*, annual incentive compensation or pension benefits. Permitting such “extra” votes would (a) dilute the importance of the core shareholder vote proposed by these rules, (b) needlessly add to the length of companies’ proxy statements, (c) be extremely difficult for investors to analyze and (d) be extremely difficult for issuers to adequately respond to in conjunction with an additional vote on executive compensation, generally.

Second, issuers should also be permitted to rely on 14a-8 to exclude proposals that would otherwise attempt to undermine the non-binding nature of the shareholder votes.

*Request for Comment #21: Should the proposed note to Rule 14a-8(i)(10) be available if the issuer has materially changed its compensation program in the time period since the most recent say-on-pay vote required by Section 14A(a)(1) and Rule 14a-21(a) or the most recent frequency vote required by Section 14A(a)(2) and Rule 14a-21(b)?*

No matter the issuer or timing of the shareholder frequency vote, Boeing believes that it would always be reasonably foreseeable that the company will undergo changes to its compensation program prior to the next scheduled frequency vote six years later. Indeed, one of the purposes of the advisory vote on executive compensation is to enhance investor participation and feedback and potentially even drive such changes in compensation practices. As a result, it would be inappropriate for the very fact of such change to upend the Dodd-Frank Act’s proposed 6-year timetable for frequency votes.

Even if the Commission sees advantages in such a rule, the variable definitions of “material” with respect to executive compensation matters would significantly enhance the Commission’s role in evaluating shareholder proposals and would ultimately work to undermine the certainty and consistency of the rules set forth in the Dodd-Frank Act. Practically speaking, such a rule would also give shareholders seeking a “redo” of the prior frequency vote an easy opportunity to simply declare that whatever change was recently made was “material” and thereby seek to redo the frequency vote. The Commission would likely be required to evaluate numerous 14a-8 no-action letters seeking exclusion of off-cycle frequency votes, each of which turning on whether a particular compensation policy change was “material” for that particular issuer. Even if an undoubtedly material change were implemented at an issuer with a triennial advisory vote on executive compensation, shareholders would



only have two additional years—not five—before weighing in on the substance of the change via a say-on-pay vote. Some investors (and, indeed, some issuers) may believe that two years is too long to have to wait; however, that is the kind of consideration that should drive discussions surrounding say-on-pay frequency, but not give a small minority of shareholders a chance to prematurely hit the “reset” button on a prior shareholder preference.

#### B.5. Proposed Amendments to Form 10-K and Form 10-Q

*Request for Comment #22: Should we require, as proposed, disclosure in a Form 10-Q or Form 10-K regarding the issuer’s plans with respect to the frequency of its shareholder votes to approve executive compensation? Would this disclosure be useful for investors?*

Boeing believes that it should not be required to disclose its plans with respect to shareholder vote frequency. We believe that the shareholder vote on frequency should be treated like any other precatory proposal—in other words, issuers should be free to consider the results of such votes at their own pace. Would the Company be precluded from changing its decision following such a disclosure, and if so, would that change itself require 8-K disclosure? Issuers’ decisions with respect to shareholder vote frequency could be influenced by any number of factors, including not only the frequency vote itself but also peer practices, considerations unique to the company’s compensation architecture and even subsequent discussions with shareholders. Companies should not be precluded from engaging in further analysis. Form 8-K does not currently otherwise require any other disclosure that amounts to a non-binding statement of present intent.

If the Commission conditions its proposed Rule 14a-8 amendments on adoption of the plurality-supported frequency, shareholders wishing to “enforce” the plurality vote of shareholders would not be precluded from submitting a 14a-8 proposal in advance of the Company declaring its intent with respect to shareholder vote frequency. In such an instance—e.g., where a plurality of shareholders declared a preference for a biennial vote—a shareholder could submit a 14a-8 request and simply wait to see whether the Company (a) submitted a no-action letter requesting exclusion under Rule 14a-8(i)(10) along the lines suggested in the Proposed Rules or (b) included the proposal in its proxy statement along the first of what is declared to be, say, triennial shareholder votes. The shareholder would not be prejudiced by having to wait a little longer to learn the issuer’s plans.

Boeing’s principal concern with the rule as proposed is that it introduces a “middle ground” between truly precatory shareholder proposals and proposals that are explicitly binding on the Company. In addition, it further undermines the principle articulated in the Dodd-Frank Act that the say-on-pay frequency is advisory in nature. To the extent that a shareholder action is not otherwise viewed as appropriate to bind



the company, Boeing believes that companies should not instead be required to artificially accelerate decisions—particularly when no investor or other third party is prejudiced as a result, except perhaps for the cost of an unnecessary postage stamp.

*Request for Comment #23: Would the proposed Form 10-Q or Form 10-K disclosure notify investors on a timely basis of the issuer’s determination regarding the frequency of the say-on-pay vote? Should this disclosure instead be included in the Form 8-K reporting the voting results otherwise required to be filed within four business days after the end of the shareholder meeting, or in a separate Form 8-K required to be filed within four business days of when an issuer determines how frequently it will conduct shareholder votes on executive compensation in light of the results of the shareholder vote on frequency?*



As described in Boeing’s response to Request for Comment #22, we do not believe that investors have an interest in requiring premature determinations with respect to shareholder vote frequency. Suppose, for example, that an issuer’s shareholder vote on frequency was split nearly four ways—26% for a triennial vote, 25% each for an annual or biennial vote, and 24% abstentions. Even if an issuer is committed to adopting a frequency consistent with shareholder preference, there may be legitimate reasons for an issuer to want to wait several months before committing to a vote frequency. For example, issuers may wish to engage in dialogue with shareholders to determine whether a biennial vote is a better “compromise” notwithstanding its failure to achieve a plurality. In addition, companies may wish to see how shareholder composition has changed over time before committing to a frequency—if a 10% shareholder known to have supported a triennial vote has sold down its position in the intervening 6-7 months, issuers may wish to take that into account. Finally, industry thinking may have evolved such as to encourage issuers to implement a vote standard different from that which was supported by the narrow plurality of stockholders relying on “old” information. For these reasons, Boeing believes that artificially accelerating disclosure of a decision provides little benefit to shareholders, may in fact limit true engagement on this issue, and will most of all mandate poor corporate governance. In addition, as mentioned in our response to Request for Comment #22, such a requirement would blur the line between that which is truly “non-binding” and that which is binding.

*Request for Comment #24: Would the amendments to Form 10-Q and 10-K, as proposed, allow an issuer sufficient time to analyze the results of the shareholder votes on the frequency of shareholder votes on executive compensation and reach a conclusion on how it should respond? Should the issuer’s plans with respect to the frequency of such shareholder votes instead be required to be disclosed no later than in the Form 10-Q or Form 10-K for the next full time period ended subsequent to the vote (for example, if the vote occurs in the second quarter of the issuer’s fiscal year, the disclosure would be required no later than in the Form 10-Q for the third quarter)?*

By framing the issue as one of whether the proposed rules give an issuer “sufficient time” suggests that the only factor is necessarily the results of the vote. In many cases, that may be the principal factor—indeed, some issuers may in advance declare an intent to abide by the plurality. In other cases, the results of the vote may be the deciding factor. However, in some cases, changing attitudes of shareholders may dictate the result. No matter what the standard ultimately adopted by an issuer (in what is, after all, a response to an advisory vote), the standard should not be a required disclosure item. The only “sufficient time” needed by an investor with respect to say-on-pay votes should be the time required in order to timely respond to the next year’s proxy statement in advance of the issuer’s associated shareholders’ meeting.



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We appreciate the opportunity to comment on the Commission’s proposed rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael F. Lohr'.

Michael F. Lohr  
Vice President, Assistant General Counsel and Corporate Secretary  
The Boeing Company

cc: Mary L. Schapiro, Chairman  
Luis A. Aguilar, Commissioner  
Kathleen L. Casey, Commissioner  
Troy A. Paredes, Commissioner  
Elisse B. Walter, Commissioner  
Meredith B. Cross, Director, Division of Corporation Finance