



DIVISION OF  
CORPORATION FINANCE

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

January 25, 2012

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

Re: General Electric Company  
Incoming letter dated December 20, 2011

Dear Mr. Mueller:

This is in response to your letter dated December 20, 2011 concerning the shareholder proposal submitted to GE by Dennis W. Rocheleau. We also have received a letter from the proponent dated January 12, 2012. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu  
Senior Special Counsel

Enclosure

cc: Dennis W. Rocheleau

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

January 25, 2012

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: General Electric Company  
Incoming letter dated December 20, 2011

The proposal seeks adoption of a procedure to evaluate an independent director's performance "by means of a system akin to the previously Board-accepted practice of ranking GE employees."

There appears to be some basis for your view that GE may exclude the proposal under rule 14a-8(i)(7), as relating to GE's ordinary business operations. In our view, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate. Accordingly, we will not recommend enforcement action to the Commission if GE omits the proposal from its proxy materials in reliance on rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which GE relies.

Sincerely,

Brandon Hill  
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.

January 12, 2012

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

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OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Ladies and Gentlemen:

This is in response to Gibson, Dunn and Crutcher's reaction, on behalf of General Electric Company, to my shareowner proposal referenced in their letter to you dated 12/20/11 which I received on 12/21/11. By this correspondence I request the opportunity to submit a formal, internal Agency appeal in accordance with your established procedures should you agree with General Electric's position to omit my proposal from 2012 proxy materials. A copy of this letter is being furnished concurrently to R.O. Mueller, Esq. in accordance with his request.

At this time I would like to make two points with respect to the gravamen of General Electric's arguments in opposition to my proposal:

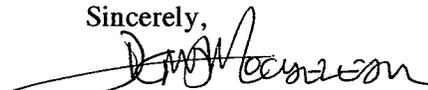
1) The Company's assertion that my proposal is an "attempt to micro-manage the Company" is indeed a curious one. Two years ago their argument against my essentially similar proposal was that it was unduly vague and insufficiently precise. It is understandable that the Company should want it both ways; why you should allow them to so have it is quite confounding. Furthermore, the differences between my proposal and previous rejected proposals dealing with nitrogen oxide emissions and low flow shower heads are considerable and in my favor. Surely the SEC can differentiate between a hawk and a handsaw.

2) My proposal does not deny the Company the opportunity to establish a committee of independent directors to nominate directors. Moreover, if the terms of Section 701 of the New York Business Corporation Law are as sweeping as the company suggest, I am puzzled by the number of proposals that have made it into the proxy...including one that sought to separate the Chairman of the Board from the Chief Executive.

In conclusion, I did not want my proposal to be purely precatory, but if the same effect can be achieved by casting my proposal as a "request" rather than a "mandate," I will be happy to do so.

Thank you for your consideration of both my comments and my request for an internal Agency appeal if you initially rule against me.

Sincerely,



Dennis W. Rocheleau

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

c: R.O. Mueller, Esq.  
Gibson, Dunn & Crutcher, LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5306

December 20, 2011

Ronald O. Mueller  
Direct: 202.955.8671  
Fax: 202.530.9569  
RMueller@gibsondunn.com

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 Proposal of Dennis W. Rocheleau*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, General Electric Company (the “Company”), intends to omit from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareowners (collectively, the “2012 Proxy Materials”) a shareowner proposal (the “Proposal”) and statements in support thereof received from Dennis W. Rocheleau (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 2012 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 this Proposal, 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.

# GIBSON DUNN

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## THE PROPOSAL

The Proposal states:

RESOLVED: That the Board adopt a procedure to evaluate an independent Director's performance by means of a system akin to the previously Board-accepted practice of ranking GE employees as A, B or C players and removing those in the last category. Accordingly, whenever more than one independent Director has as of September 1 of any year, ten or more years of Board service they will be forced ranked numerically by all Directors prior to year-end. For example, if four independent directors had ten or more years of Board service, each director of the entire Board would rank each of the four either 1, 2, 3 or 4; 1 being the most effective and 4 being the least effective. Those numerical rankings would then be aggregated. The independent Director with the highest total will not be re-nominated. If, by this ranking process, two or more independent Directors receive the same highest total numerical ranking, the one with longer (or longest) Board service will not be re-nominated. Furthermore, as of September 1 of any year, whenever only one independent Director has ten or more years of Board service no such numerical forced ranking would be required and such Director will be re-nominated only if all other Directors vote unanimously by secret ballot to re-nominate such Director.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2012 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(i)(1) because the Proposal impermissibly mandates the Company's board of directors to engage in actions within its discretion.

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ANALYSIS

**I. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company's Ordinary Business Operations Because It Attempts to Micro-Manage The Company.**

We believe that the Company may exclude the Proposal pursuant to Rule 14a-8(i)(7) because it deals with matters relating to the Company's ordinary business operations. Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareowner proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The Proposal goes beyond raising any policy issue with respect to director nomination procedures and clearly seeks to "micro-manage" a process for evaluating and nominating independent directors. Rather than raising a general policy issue and outlining a process for the Company's board to follow in developing and applying that process, the Proposal dictates: (i) the specific date for determining which directors are subject to the evaluation process, (ii) the tenure standard for determining which directors are subject to the evaluation process, (iii) who performs the evaluation process (that is, the full board), (iv) what scale is used for evaluating directors, including what is the high and low end of the scale, (v) the timing of the evaluation process (after September 1 but before the end of each year) and (vi) an arbitrary means for resolving certain potential outcomes under the prescribed process.

The Proposal thus seeks to "micro-manage" matters of a complex nature upon which shareowners, as a group, are not in a position to make an informed judgment. Indeed, the Proposal replicates the very circumstances which the Commission discussed under which

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micro-managing may come into play: circumstances in which a proposal “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” *Id.* The Proposal demonstrates the basis for the Commission’s determination that such proposals are not proper under Rule 14a-8(i)(7), as the detail raises a host of issues that shareowners are not well positioned to address by voting For or Against the Proposal. For example, the strictures of the Proposal would require the Company to violate New York Stock Exchange listing standards, as it would have the full board, instead of a committee of independent directors, select or recommend the director nominees for the next annual meeting of shareowners.<sup>1</sup> Likewise, the timing provisions mandated under the Proposal do not allow for other factors that could influence the evaluation and nomination process. Finally, the dictates of the Proposal do not address situations such as a director having the “highest total” because of different numbers of responses being submitted on each of the directors being evaluated.

The Staff has consistently concurred that shareowner proposals that – similar to the Proposal – attempt to micromanage a company by providing specific details dictating procedures are excludible under Rule 14a-8(i)(7). In this respect, the Proposal is comparable to the once considered in *Duke Energy Carolinas, LLC* (avail. Feb. 16, 2001). There, the Staff concurred with the exclusion of a proposal under Rule 14a-8(i)(7) which recommended to the company’s board of directors that they take steps to reduce nitrogen oxide emissions from the company’s coal-fired power plants by 80% and to limit each boiler to .15 pounds of nitrogen oxide per million BTUs of heat input by a certain year. The company argued that the proposal sought to micro-manage the company since it set a numerical percentage target for the level of nitrogen oxide reduction to be achieved, suggested a methodology to be used in reducing the nitrogen oxide emissions, and set a precise numerical limit of nitrogen oxide allowable for each boiler. Concurring that the proposal could be excluded under Rule 14a-8(i)(7), the Staff appeared to agree with the company’s argument that such specificity in the proposal amounted to micro-managing the company. *See also Marriott International Inc.* (avail. Mar. 17, 2010) (Staff concurred that a shareowner proposal to install and test low-flow shower heads in some of the company’s hotels amounted to micro-managing the company by requiring the use of specific technologies); *Ford Motor Co.* (avail. Mar. 2, 2004)

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<sup>1</sup> Section 303A.04 of the NYSE Listed Company Manual (“Section 303A.04”) states that “[l]isted companies must have a nominating/corporate governance committee composed entirely of independent directors.” Section 303A.04 further provides that the this committee is responsible for identifying individuals qualified to become board members and to select or recommend to the board to select the director nominees for the next annual meeting of shareowners.

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(Staff concurred with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details such as the measured temperature at certain locations and the method of measurement, the effect on temperature of increases or decreases in certain atmospheric gases, the effects of radiation from the sun on global warming/cooling, carbon dioxide production and absorption and a discussion of certain costs and benefits).

The Proposal is vexed with precisely the types of intricate details and specificity that led the Staff to concur with the exclusion of the proposals discussed above. The Proposal's time period requirements and date requirements combined with its specific ranking process, tie-breaker methodology and other detail amounts to an attempt to micro-manage the Company similar to the proposals discussed above. Consistent with the 1998 Release and the Staff letters described above, the Proposal may be excluded, pursuant to Rule 14a-8(i)(7), as a matter of the Company's ordinary business operations because it attempts to micro-manage the Company.

## **II. The Proposal May be Excluded Under Rule 14a-8(i)(1) Because The Proposal Impermissibly Requires The Board To Take Action Within Its Discretion.**

Rule 14a-8(i)(1) provides an exclusion for shareowner proposals that are "not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization." The 1998 Release. The Proposal would require action that, under state law, falls within the scope of the powers of the Company's board of directors. The Company is a New York corporation. Section 701 of the New York Business Corporation Law provides that, "[s]ubject to any provision in the certificate of incorporation, . . . the business of a corporation shall be managed under the direction of its board of directors." Nothing in the Certificate of Incorporation of the Company grants shareowners a right to mandate that the Company's board of directors take actions as specified in the Proposal.

The Note to Rule 14a-8(i)(1) states that "[d]epending 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 the 1976 adopting release for certain amendments to Rule 14a-8(c)(1) (now Rule 14a-8(i)(1)), the Commission stated:

The text of the above Note is in accord with the longstanding interpretative view of the Commission and its staff under subparagraph (c)(1). In this regard, it is the Commission's understanding that the laws of most states do not, for the most part, explicitly indicate those matters which are proper for security holders to act upon but instead provide only that "the business and affairs of every corporation organized

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under this law shall be managed by its board of directors,” or words to that effect. Under such a statute, the board may be considered to have exclusive discretion in corporate matters, absent a specific provision to the contrary in the statute itself, or the corporation’s charter or bylaws. Accordingly, proposals by security holders that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board’s discretionary authority under the typical statute.

*Exchange Act Release No. 34-12999* (Nov. 22, 1976). The Proposal mandates, rather than requests, that the Company conduct this specific evaluation process. The Staff has consistently concurred that a shareowner proposal mandating or directing that a company’s board of directors take certain actions is inconsistent with the discretionary authority granted to the board of directors under state law and violates Rule 14a-8(i)(1). *See National Technical Systems Inc.* (avail. Mar. 29, 2011); *Bank of America Corp.* (avail. Feb. 16, 2011); *MGM Resorts International* (avail. Feb. 6, 2008); *Cisco Systems Inc.* (avail. Jul. 29, 2005). In each case, the proposal mandated, rather than requested, that the company take a specific action. Accordingly, the Proposal is not a proper subject for shareowner action under New York law since it mandates that the Company’s board of directors conduct a specific evaluation and nomination process for certain independent directors, a matter clearly within the discretion and purview of the Company’s board of directors. The Proposal mandates that the Company’s board adopt a specific procedure whereby certain independent directors will be force ranked and precluded from re-nomination based on the results of the procedure. Such a mandate to the Company’s board of directors, rather than a request to the Company’s board of directors, to adopt a resolution regarding a subject matter that is clearly within the purview and discretion of the Company’s board of directors is not a proper subject matter for shareowner action under New York law. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(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 Proposal from its 2012 Proxy Materials.

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We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). 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 & Securities Counsel, at (203) 373-2227.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Lori Zyskowski, General Electric Company  
Dennis Rocheleau

101188308.4

GIBSON DUNN

**EXHIBIT A**

October 25, 2011

Brackett B. Denniston, III  
Secretary  
General Electric Company  
3135 Easton Turnpike  
Fairfield, CT 06828

RECEIVED

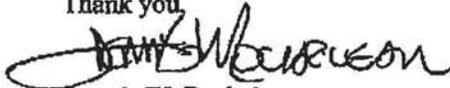
OCT 31 2011

B. B. DENNISTON III

Dear Mr. Denniston:

In accordance with the Shareowner proposal language on p. 54 of the 2011 Proxy Statement, I submit the attached for inclusion in the 2012 Proxy Statement. I own more than enough shares to meet the SEC's standards and I intend to own them through the date of next year's Annual Meeting. As you know, the vast majority of my GE shares are held by the Company, or perhaps Fidelity Investments, in the Savings and Security Program.

Thank you,



Dennis W. Rocheleau

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

**RESOLVED:** That the Board adopt a procedure to evaluate an independent Director's performance by means of a system akin to the previously Board-accepted practice of ranking GE employees as A, B or C players and removing those in the last category. Accordingly, whenever more than one independent Director has as of September 1 of any year, ten or more years of Board service they will be forced ranked numerically by all Directors prior to year-end. For example, if four independent directors had ten or more years of Board service, each director of the entire Board would rank each of the four either 1, 2, 3 or 4; 1 being the most effective and 4 being the least effective. Those numerical rankings would then be aggregated. The independent Director with the highest total will not be re-nominated. If, by this ranking process, two or more independent Directors receive the same highest total numerical ranking, the one with longer (or longest) Board service will not be re-nominated. Furthermore, as of September 1 of any year, whenever only one independent Director has ten or more years of Board service no such numerical forced ranking would be required and such Director will be re-nominated only if all other Directors vote unanimously by secret ballot to re-nominate such Director.

**Supporting Statement**

Our Board needs to become more dynamic and attuned to the demands of the current Company portfolio of businesses and the world economy. We cannot afford to wait for age or individual Director decision making to cull properly the Board and improve it. If the Company can repeatedly err in its selection of officers from a talent pool it knows extremely well, it defies logic that the success rate in selecting relatively unknown outsiders for our Board would be essentially error free. Ten years is sufficient time to evaluate any Director's performance and a not unreasonable "term limit" if it comes to that.