



DIVISION OF
CORPORATION FINANCE

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

March 14, 2022

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: General Electric Company (the "Company")
Incoming letter dated December 17, 2021

Dear Mr. Mueller:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Martin Harangozo (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board consider voting to cease all executive stock option programs and bonus programs.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(4). We are unable to conclude that the Proposal relates to the redress of a personal claim or grievance against the Company. We are also unable to conclude that the Proposal is designed to result in a benefit to the Proponent, or to further a personal interest, which is not shared by the other shareholders at large.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal does not seek to micromanage the Company.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the actions taken by the Management Development and Compensation Committee of the board have not substantially implemented the Proposal.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Martin Harangozo

December 17, 2021

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*
Shareholder Proposal of Martin Harangozo
Securities 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 2022 Annual Meeting of Shareholders (collectively, the “2022 Proxy Materials”) a shareholder proposal (the “Proposal”) received from Martin Harangozo (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 2022 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 shareholder 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 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.

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THE PROPOSAL

The Proposal in its entirety states:

The Board of Directors are requested to consider voting a cessation of all Executive Stock Option Programs, and Bonus Programs. Rewards via a bona fide salary program are a necessity. Salary increases to deserving Executives will reward only those who productively enhance the Company's Business. Only if and when profit increases are published and compiled annually, and verified by a Certified Accounting Firm a realistic salary increase commensurate with the increase in the Company's Business can be considered. Should there be no increase in the Company's Business, or a decline in Corporate Business is published and compiled annually, and verified by a Certified Accounting Firm, no salary increase(s) will be forthcoming. Rewards via the above measurements will suffice, and remove the bonus and Executive Stock Option Program(s) permanently[.]

The above shareholder proposal has been in the General Electric Company proxy statement many times.

Please vote for cessation of all Executive Stock Option Program, and Bonus Programs.

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

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to:

- Rule 14a-8(i)(3) because it is impermissibly vague and indefinite so as to be inherently misleading;
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal;
- Rule 14a-8(i)(7) because the Proposal seeks to micromanage the Company; and
- Rule 14a-8(i)(4) because the Proposal relates to the redress of a personal grievance and is designed to benefit the Proponent in a manner that is not in the common interest of the Company's shareholders.

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ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because It Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading.

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail."); *Capital One Financial Corp.* (avail. Feb. 7, 2003) (concurring with the exclusion under Rule 14a-8(i)(3) of a proposal where the company argued that its shareholders "would not know with any certainty what they are voting either for or against").

The Staff consistently has concurred with the exclusion of shareholder proposals concerning executive compensation under Rule 14a-8(i)(3) where aspects of the proposals created ambiguities that made them vague or indefinite. In particular, the Staff has routinely concurred with the exclusion of proposals relating to executive compensation that fail to provide sufficient guidance to enable either shareholders or the company to understand how the proposal would be implemented or what changes are intended. For example, in *Apple Inc. (Zhao)* (avail. Dec. 6, 2019), the Staff concurred that a company could exclude, as vague and indefinite, a proposal that recommended that the company "improve guiding principles of executive compensation," but that lacked sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that the proponent sought to potentially improve with respect to the "guiding principles." Similarly, in *eBay Inc.* (avail. Apr. 10, 2019), the Staff concurred that a company could exclude as vague and indefinite a proposal requesting that a company "reform the company's executive compensation committee." The proposal's supporting statement did not request any specific reforms, but instead made observations about various elements of executive compensation. These statements did not indicate whether those elements of the company's executive compensation program needed reform or how they should or could be affected by reform of the compensation committee. In its response, the Staff noted that "neither shareholders nor the [c]ompany would be able to determine with any reasonable certainty the nature of the 'reform' the [p]roposal is requesting. Thus, the [p]roposal, taken as a whole, is so vague and indefinite that it is rendered materially misleading." *See also The Boeing Co. (Recon.)* (avail.

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Mar. 2, 2011) (concurring with the exclusion of a proposal under Rule 14a-8(i)(3), noting “that the proposal does not sufficiently explain the meaning of ‘executive pay rights’ and that, as a result, neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires”); *General Motors Corp.* (avail. Mar. 26, 2009) (concurring with the exclusion of a proposal to “[e]liminate all incentives for the CEOs [sic] and the Board of Directors” where the proposal did not identify what “incentives” were to be addressed or for which “CEOs”).

Here, the Proposal requests that the Company “consider voting a cessation of all *Executive Stock Option Programs*, and Bonus Programs,” (emphasis added) and then discusses compensating executives “via a bona fide salary program.” Although most of the Proposal addresses the operation of “a bona fide salary program,” the only sentence in the Proposal specifically proposing an action is the first sentence requesting the Board “to consider a cessation of all Executive Stock Option Programs.” Thus, neither the Company nor shareholders can tell whether the Proposal is addressing only consideration of a cessation of the Company’s Executive Stock Option Programs and Bonus Programs (terms that are not defined in the Proposal), or is also requesting the implementation of “a bona fide salary program” that operates along the lines described in the Proposal. More significantly, the Proposal fails to address at all the other elements of the Company’s executive compensation program, including Restricted Stock Units (“RSUs”), Performance Shares, and Performance Share Units (“PSUs”), which are among the most significant aspects of the Company’s executive compensation program.¹

In light of the current structure of the Company’s executive compensation program, having the Board consider ceasing all “Executive Stock Option Programs, and Bonus Programs,” as the Proposal requests, would not actually result in an executive compensation program consisting of salary alone. Nothing in the Proposal indicates whether, if or how the Proponent expects the Company to address RSUs, Performance Shares, or PSUs. Accordingly, shareholders considering this Proposal would be materially confused as to what they are being asked to vote on. Shareholders who understand the Company’s compensation structure may assume that the Proposal’s request would have less of an impact on the compensation provided to executives, since it does not expressly relate to ceasing RSUs, Performance Shares or PSUs, and may vote in favor of the Proposal based on that

¹ In fact, as reflected in the Summary Compensation Table of the Company’s 2021 Notice of Annual Meeting and Proxy Statement, available at https://www.ge.com/sites/default/files/ge_proxy2021.pdf, at page 39, the Company’s principal executive officer has not received any stock options in the last three years. Other elements of the Company’s executive compensation program that are not addressed in the Proposal include the Company’s pension and non-qualified deferred compensation plans, and various benefit arrangements including life insurance and retirement savings programs.

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assumption. Conversely, other shareholders may assume that the Proposal addresses every element of the Company's executive compensation program, such that the cessation of all Executive Stock Option Programs and Bonus Programs would result in executives receiving only salary under a "bona fide salary program." Further, shareholders familiar with the Company's existing executive compensation program may assume that the intent of the Proposal is to eliminate all forms of equity incentive compensation, not just "Executive Stock Options" and cast their votes based on whether or not they support such a dramatic overhaul to the Company's existing compensation structure. Still other shareholders may assume the Proposal provides flexibility to consider which other equity incentive programs to retain and which to modify or terminate, in light of the Proposal's omissions and ill-drafting. As a result, shareholders voting on this Proposal could have materially different expectations of its outcome if implemented.

Because there is no language in the Proposal that sheds further light on what is intended with respect to the other, significant elements of the Company's executive compensation program, and because the Proposal is vague even as to the whether implementation of the Proposal encompasses changes to the Company's salary arrangements, neither the Company nor its shareholders could reasonably determine how the Proposal intends to address certain key elements of the Company's compensation program and may have entirely different and conflicting expectations when casting their vote. By failing to address what "voting a cessation of all Executive Stock Option Programs, and Bonus Programs" would mean with respect to other elements of the Company's executive compensation program, including significantly PSUs, Performance Shares, and RSUs, the Proposal is fundamentally vague and ambiguous; each shareholder could have different views of what the resulting executive compensation program would entail when considering how to vote on the Proposal. Similar to *eBay* and the above-cited precedent, the Proposal therefore is properly excludable as vague and indefinite.

II. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented.

The Company has substantially implemented the Proposal because the Management Development and Compensation Committee of the Board (the "Committee")² took the action

² The Committee is the appropriate body for this review because the Board, as required by the Dodd-Frank Act and NYSE rules, has delegated to the Committee oversight of matters relating to executive compensation and has authorized the Committee to "review and approve on an annual basis the evaluation process and compensation structure for the Company's officers." The Committee reports to the Board, and coordinates with the other Board committees where appropriate, regarding the Company's policies, practices, and strategies with respect to executive compensation matters. *See* The Management

[Footnote continued on next page]

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called for by the Proposal. Specifically, the Committee regularly reviews the terms and elements of the Company's executive compensation program. At its most recent meeting, and in response to the Proposal, the Committee was provided a copy of the Proposal, and considered terminating the Company's use of stock options and the Company's bonus programs. In light of the lack of clarity as to whether the Proposal also requests consideration of a "bona fide salary program" reflecting the terms addressed in the Proposal, and its failure to address other elements of the Company's equity compensation programs, the Committee also considered implementing a salary program on the terms described in the Proposal and whether to cease other forms of equity awards. At the meeting, the Committee considered a variety of factors, including that (i) the Company's executive compensation program considers executive compensation practices of 20+ peer group companies to assess its program design and pay practices, and also as a reference point when assessing individual pay; (ii) the Company's incentive programs are designed to drive accountability for executing its strategy, and its bonus program is designed to reward achievement of short-term performance goals, while long-term incentive awards encourage delivery of strong results over multi-year performance periods and further align executive compensation with shareholder interests; and (iii) salary increases for senior executives are assessed on a case-by-case basis in light of the scope of their responsibilities, taking into account amounts paid to peers within and outside the Company. Following this review and consideration of the Proposal, and in light of the factors identified above, the Committee determined that it was not appropriate to cease the Company's use of stock options and bonuses as elements of compensation in its executive compensation program, not to terminate the Company's equity incentive programs, and not to predicate executive salary increases on increasing profit.

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal from its proxy materials "[i]f the company has already substantially implemented the proposal." The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was "designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management." Exchange Act Release No. 12598 (July 7, 1976). Under this standard, when a company can demonstrate that it has already taken actions to address the essential objective of a shareholder proposal, the Staff has concurred that the proposal has been "substantially implemented" and may be excluded as moot. The Staff has noted that "a determination that the [c]ompany has substantially implemented the proposal depends upon whether [the company's] particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991). At the same time, a company need not implement a proposal in exactly the same manner set forth by the proponent. *See General Motors Corp.* (avail. Mar. 4, 1996). For example, the

Development and Compensation Committee Charter, available at <https://www.ge.com/investor-relations/governance>.

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Staff has concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent or which may differ from the manner in which the shareholder proponent would implement the proposal. *See, e.g., Devon Energy Corp.* (avail. Apr. 1, 2020); *The Dow Chemical Co.* (avail. Mar. 18, 2014, *recon. denied* Mar. 25, 2014).

Moreover, the Staff has consistently concurred with the exclusion of proposals as substantially implemented where the proposal requests that the company or its board consider, review or evaluate a certain matter, when the company demonstrates that the requested consideration, review or evaluation has been undertaken. This is true even when the board-level action undertaken does not result in the outcome the proponent might have preferred. For example, in *JPMorgan Chase & Co.* (avail. Feb. 5, 2020), the proposal asked that the board of directors “review” the Business Roundtable’s Statement of the Purpose of a Corporation and provide oversight and guidance as to how it should alter the company’s governance and management systems. In granting no-action relief under Rule 14a-8(i)(10), the Staff noted the company’s representation that a board committee had reviewed the Statement and “determined that no additional action or assessment [was] required, as the [c]ompany already operate[d] in accordance with the principles set forth in the BRT statement with oversight and guidance by the Board of Directors, consistent with the Board’s fiduciary duties.” *Id.* Similarly, in *Tejon Ranch Co.* (avail. Mar. 12, 2021, *recon. denied* Apr. 2, 2021), the Staff concurred with the exclusion of a proposal requesting that the board of directors “evaluate the existing policy for quarterly communications with stockholders under the [c]ompany’s investor relations program and consider adopting periodic earnings calls.” The company argued that it had substantially implemented the proposal because the company confirmed that the board “already (1) evaluated the Company’s existing policy for quarterly communications with shareholders under its investor relations program, and (2) considered adopting periodic earnings calls, and has determined that shareholders are best served by the Company’s existing methods of communications.” *Id.* The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(10). The Staff affirmed its decision even after the proponent requested reconsideration, taking issue with the fact that the company had not actually changed its policy or agreed to hold earnings calls.

Likewise, the Staff has previously concurred that the Company was able to exclude a proposal as substantially implemented when the proposal requested Board-level consideration of an issue and the Company demonstrated that the Board had met to examine the issue, even when it did not result in the outcome the proponent expected. *See General Electric Co. (Recon.)* (avail. Feb. 29, 2012) (“*GE 2012*”) (concurring with the exclusion of a proposal requesting that the Board “reexamine the [C]ompany’s dividend policy and consider special dividends as a means of returning excess cash to shareholders”). There, the Company stated that a Board meeting was held in response to the proposal’s submission at which the Board formally reexamined the Company’s dividend policy, considered special

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dividends, and ultimately determined that declaring a special dividend was not appropriate at the time. The Staff agreed that the Board’s consideration of the matter requested by the proposal substantially implemented the proposal, notwithstanding that no changes in policy resulted. *See also General Electric Co.* (avail. Jan. 23, 2010) (“*GE 2010*”) (concurring with the exclusion of a proposal requesting that the Company “explore” with certain executive officers the renunciation of stock option grants specified in the proposal, where the Company represented that management presented the matter to the Board and, with the Board’s authorization, the Company’s legal department communicated with each of the executives regarding whether they would renounce their option grants).

Here, the Proposal requests that the Board “consider voting a cessation of all Executive Stock Option Programs, and Bonus Programs.” Relatedly, the Proposal also addresses providing compensation limited to “a bona fide salary program” with increases limited to the terms and conditions further described therein. As discussed above, the Committee met and considered the Proposal but determined not to terminate its equity incentive and bonus compensation programs or to predicate executive salary increases on increasing profit. Accordingly, because the Committee formally considered the matters requested by the Proposal (and even beyond what the Proposal requested, since the Committee considered cessation of all equity incentives, not just stock options), the Proposal’s essential objective—having its Committee “consider voting a cessation of all Executive Stock Option Programs, and Bonus Programs”—has been accomplished.

The Committee’s actions are similar to the actions of the boards in *JPMorgan Chase, Tejon Ranch Co., GE 2012* and *GE 2010* because the Committee has undertaken the requested consideration. Further, consistent with foregoing precedent, the Committee was not required to take action to terminate its equity incentive or bonus programs or make any related changes to its existing executive compensation practices in order to demonstrate that it has substantially implemented the Proposal’s request to “consider” the matters raised in the Proposal. Accordingly, the Proposal may be excluded from the 2022 Proxy Materials in reliance on Rule 14a-8(i)(10) because the Board has substantially implemented the Proposal.

III. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Seeks To Micromanage The Company.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder 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

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business and operations.” *See* 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. As relevant here, one of those considerations is “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 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.”

In Staff Legal Bulletin No. 14L (Nov. 3, 2021) (“SLB 14L”), the Staff clarified that not all “proposals seeking detail or seeking to promote timeframes” constitute micromanagement, and that going forward the Staff would “focus on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” To that end, the Staff stated that this “approach is consistent with the Commission’s views on the ordinary business exclusion, *which is designed to preserve management’s discretion on ordinary business matters* but not prevent shareholders from providing high-level direction on large strategic corporate matters” (emphasis added). SLB 14L.

If, consistent with the Staff’s traditional approach to analyzing proposals that ask for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document,³ one looks past the request that the Board “consider” certain changes to the executive compensation program, it is clear that the underlying subject matter of the Proposal seeks to micromanage complex aspects of the Company’s executive compensation program. As such, the Proposal runs afoul of the kind of management-level discretion the Commission sought to preserve with the ordinary business exclusion by seeking to prohibit the Company from using a specific type of equity incentive and any bonuses to compensate and incentivize executives; prescribing that executives will only be rewarded via salary increases that are tied to a single performance criteria; and dictating how, when and on what terms the Company may offer salary increases. As such, the Proposal goes well beyond providing “high level direction” for the Board to consider, without regard for the highly complex and sophisticated nature of designing and implementing an effective

³ *See* Staff Legal Bulletin No. 14E, at part B (Oct. 27, 2009).

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and competitive executive compensation program at a Fortune 50 company, and is thus properly excludable based on micromanagement.

The Proposal inappropriately limits the discretion of the Board in determining executive compensation, going beyond “seeking detail or seeking to promote a timeframe” and instead imposing an exclusive and restrictive method by which executives should be compensated, requiring the Company to cease certain of its current compensation programs and adopt the specific executive compensation program dictated by the Proponent. The underlying subject of the Proposal addresses ceasing “all Executive Stock Option Programs, and Bonus Programs,” and providing “[r]ewards via a bona fide salary program. The Proposal goes on to address when and on what terms the Company can offer salary increases to its executive, stipulating that “[o]nly if and when profit increases are published and compiled annually, and verified by a Certified Accounting Firm a realistic salary increase commensurate with the increase [i]n the Company’s Business can be considered.” As well, there would be no salary increases when there is “no increase in the Company’s Business, or a decline in Corporate Business.”

By imposing a specific method of executive compensation (*i.e.*, upending the Company’s current executive compensation program by prohibiting the use of stock options and bonus incentives) with a high level of granularity (*i.e.*, providing for only one form of compensation (salary) and prescribing extremely specific and limited parameters under which the Company is allowed to consider adjusting compensation for executive officers), the Proposal does more than limit Board discretion; the Proposal eliminates discretion. By imposing a specific method to address the complex issue of executive compensation design and administration, the Proposal would, in the words of SLB 14L, “inappropriately limit[] discretion of the board or management” and is properly excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

The Staff has recently concurred with the exclusion of similar proposals addressing executive compensation based on micromanagement under Rule 14a-8(i)(7). For example, in *Rite Aid Corp.* (avail. Apr. 23, 2021, *recon. denied* May 10, 2021), the Staff concurred with the exclusion of a proposal that requested the board adopt a policy that would prohibit equity compensation grants to senior executives when the company common stock had a market price lower than the grant date market price of any prior equity compensation grants to such executives. There, the company argued that the proposal prescribed specific limitations on the ability of its compensation committee “to make business judgments, without any flexibility or discretion,” and restricted the compensation committee from “making any equity compensation grants to senior executives in certain instances without regard to circumstances and the committee’s business judgment.” Even more so than in *Rite Aid*, the Proposal would limit the Board’s ability to make business judgments concerning how to compensate its executives and eliminate the Board’s ability to determine the appropriate

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forms and terms of compensation to offer, without affording the Board any flexibility or discretion. *See also Gilead Sciences, Inc.* (avail. Dec. 23, 2020) (concurring with the exclusion of a proposal recommending the company reduce its named executive officer pay ratios each year until they reached 20 to 1, where the company argued the terms of the proposal were prescriptive and would unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill fiduciary duties to shareholders); *Comcast Corp.* (avail. Apr. 1, 2020) (concurring with the exclusion of a proposal reducing a company's CEO pay ratio by 25-50%); *The Walt Disney Co. (Karen Lizette Perricone Revocable Trust)* (avail. Dec. 6, 2019) (concurring with the exclusion of a proposal limiting the annual total compensation of the company's chairman and chief executive officer to a ratio not to exceed the total annual compensation of the company's median employee by more than 500:1, within a five-year timeframe); *JPMorgan Chase & Co.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal that requested the board adopt a policy prohibiting the vesting of equity-based awards for senior executives who voluntarily resigned to enter government service); *AbbVie Inc.* (avail. Feb. 15, 2019) (concurring with the exclusion of a proposal requesting a policy to prohibit financial performance metric adjustments to exclude legal or compliance costs for the purposes of determining senior executive incentive compensation, noting that the proposal "would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances or the possibility of reasonable exceptions").

Moreover, the Staff's position that proposals which unduly limit the board's or management's discretion are excludable under micromanagement is longstanding, even when the proposal raises important policy considerations. For example, in *Wendy's Co.* (avail. Mar. 2, 2017), the company received a proposal urging the board to join the Fair Food Program. The company argued that the selection of suppliers and management of supplier relationships was a complex process that shareholders were not in a position to make an informed judgment about and that the proposal sought to substitute management's existing practices and processes. The Staff concurred with the exclusion of the proposal, noting the proposal sought "to micromanage 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." Like in *Wendy's*, and as discussed above, the Proposal inappropriately attempts to substitute the Board's views with respect to the Company's existing compensation program and practices, notwithstanding that the detailed considerations required to design and implement an appropriate and competitive executive compensation program, consistent with best practices and in the interest of shareholders, are overly complex. Also, in *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017), the Staff concurred with exclusion based on micromanagement where the company received a proposal which urged the board to retire the current resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and

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augmented reality or other types of non-animal experience. There, the company argued that its management and board invested significant time and effort in determining which experiences to offer, while also striving to generate an attractive return to company shareholders, and that plans for new exhibits and attractions are within the purview of management. *See also Amazon.com, Inc.* (avail. Mar. 20, 2013) (concurring with the exclusion of a proposal requesting the company hold a competition for giving public advice on the voting items in the company's proxy statement with certain specific features); *General Electric Co.* (avail. Jan. 25, 2012, *recon. denied* Apr. 16, 2012) (concurring with the exclusion of a proposal to adopt a procedure to evaluate independent directors' performance by using a specific method). Similar to the foregoing precedent, the Proposal probes too deeply into matters of a complex nature upon which shareholders would not be in a position to make an informed judgement, and is properly excludable under Rule 14a-8(i)(7), and consistent with the 1998 Release.

As discussed above, if implemented, the underlying subject of the Proposal inappropriately strips the Board (and the Committee) of its discretion to set and determine appropriate compensation for Company executives based on a myriad of complex factors involved in determining overall structure and amounts of compensation, and would replace the Company's current executive compensation program with the narrow and rigid compensation structure described in the Proposal. As described above, the Proposal thus seeks to impose a specific method for implementing executive compensation with a "level of granularity" that "inappropriately limits discretion of the board or management." As such, consistent with SLB 14L and the aforementioned precedent, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company.

IV. The Proposal May Be Excluded Under Rule 14a-8(i)(4) Because The Proposal Relates To The Redress Of A Personal Grievance And Is Designed To Benefit The Proponent In A Manner That Is Not In The Common Interest Of The Company's Shareholders.

Although the Proposal is phrased in terms that "might relate to matters which may be of general interest to all security holders," it is clear from the Proponent's history with the Company that he is attempting to use the shareholder proposal process as a tactic to reassert and redress his personal grievance against the Company and his former supervisor (the "Supervisor") to advance his personal objectives, which are not in the common interest of the Company's shareholders.

As explained in *General Electric Co.* (avail. Feb. 14, 2020; *recon. denied* Feb. 28, 2020) ("*General Electric 2020*"), the Proponent was hired by the Company in 1990, separated from the Company in 2011, and subsequently filed a claim against the Company under the

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Company's alternative dispute resolution process,⁴ asserting various allegations related to his employment with the Company and seeking monetary and other relief. In 2012, the Proponent submitted another complaint against the Company in which he asserted allegations relating to the Supervisor. *General Electric 2020* further explains that commencing in 2012, the Company has received shareholder proposals every year from the Proponent and/or some variation of four other individuals (each, a "Harangozo Proponent," and referred to collectively as the "Harangozo Proponents").⁵ While some of the shareholder proposals were facially neutral, several proposals submitted by the Proponent and the Harangozo Proponents raised claims relating to the alleged treatment by the Company and the Supervisor of an aggrieved former employee and asserted the Proponent's perspective on such matters. The facts surrounding these submissions make clear that the Proponent and the Harangozo Proponents have long coordinated their proposal submissions to the Company in a manner designed to harangue the Company and the Supervisor, vindicate the Proponent's perspective, ensure that the Proponent has a continual opportunity to assert and seek redress of his personal grievance in a public forum through use of the shareholder proposal process, and provide the Proponent with a platform for speaking at the Company's annual shareholder meetings.

As recently as last year, when the Company agreed to include the Proponent's facially neutral proposal in its 2021 proxy statement, the Proponent used his opportunity during the 2021 Annual Meeting of Shareholders not to address the merits of his proposal but instead to discuss his personal history with the Company and air his longstanding grievances against the Company and the Supervisor, including by re-alleging claims of inappropriate accounting, deriding the Supervisor (*e.g.*, referring to "my [Supervisor], a very obese man" and alleging that the Supervisor "retaliated against those that questioned his accounting" and "lied under oath"), and once again referencing the "Spirit and Letter" policy (*i.e.*, the Company's Code of Conduct); each of which has been consistently raised by the Proponent and Harangozo Proponents in prior proposals (and Company no-action requests) and directly relate to the Proponent's grievance. A copy of the relevant portion of the transcript from the Company's 2021 Annual Meeting of Shareholders is attached as Exhibit B. The Proponent

⁴ The Company does not take issue with the Proponent's use of the Company's alternative dispute resolution process, which the Company views as an appropriate forum for employees to raise any grievances.

⁵ A proposal similar to the Proposal was last submitted to the Company by one of the Harangozo Proponents in 2014. *See General Electric Co.* (avail. Dec. 19, 2014).

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made similar remarks at another recent Company annual meeting.⁶ Thus it is clear that the Proponent has used attendance at the Company's annual meetings as a platform to continue to publicly criticize the Company and the Supervisor under the guise of various corporate governance concerns, and that submission of this year's Proposal yet again resurrects that tactic to do the same. We refer the Staff to the table included in *General Electric 2020* and Exhibit B thereto for further evidence regarding how the Proponent has used the shareholder proposal process to advance his personal grievance since 2012. The foregoing is demonstrative of the Proponent's ongoing manipulation and abuse of the shareholder proposal process for personal ends. The Proposal represents the latest in a series of actions that the Proponent has taken in his years-long crusade against the Company and the Supervisor. Accordingly, the Proposal is properly excludable under Rule 14a-8(i)(4).

Rule 14a-8(i)(4) permits the exclusion of shareholder proposals that are (i) related to the redress of a personal claim or grievance against a company or any other person, or (ii) designed to result in a benefit to a proponent or to further a personal interest of a proponent, which other shareholders at large do not share. The Commission has stated that Rule 14a-8(i)(4) is designed to "insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer's shareholders generally." Exchange Act Release No. 20091 (Aug. 16, 1983). In addition, the Commission has stated, in discussing the predecessor of Rule 14a-8(i)(4) (Rule 14a-8(c)(4)), that Rule 14a-8 "is not intended to provide a means for a person to air or remedy some personal claim or grievance or to further some personal interest. Such use of the security holder proposal procedures is an abuse of the security holder proposal process. . . ." Exchange Act Release No. 19135 (Oct. 14, 1982). Moreover, the Commission has noted that "[t]he cost and time involved in dealing with" a shareholder proposal involving a personal grievance or furthering a personal interest not shared by other shareholders is "a disservice to the interests of the issuer and its security holders at large." Exchange Act Release No. 19135 (Oct. 14, 1982). Thus, Rule 14a-8(i)(4) provides a means to exclude shareholder proposals the purpose of which is to "air or remedy" a personal grievance or advance some personal interest. This interpretation is consistent with the Commission's statement at the time the rule was adopted that "the Commission does not believe that an issuer's proxy materials are a proper forum for airing personal claims or grievances." Exchange Act Release No. 12999 (Nov. 22, 1976).

⁶ See General Electric Company 2018 Annual Meeting Transcript, *available at* https://www.ge.com/sites/default/files/GE-USQ_Transcript_2018-04-25.pdf. In the transcript, the Proponent identifies the individual named in the proposal as the "Company Parts Sourcing Boss" as his former supervisor.

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The Commission also has confirmed that this basis for exclusion applies even to proposals phrased in terms that “might relate to matters which may be of general interest to all security holders,” and thus that Rule 14a-8(i)(4) justifies the omission of neutrally worded proposals “if it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” Exchange Act Release No. 19135 (Oct. 14, 1982). Consistent with this interpretation of Rule 14a-8(i)(4), the Staff on numerous occasions has concurred with the exclusion of a proposal that included a facially neutral resolution, but where the facts demonstrated that the proposal’s true intent was to further a personal interest or redress a personal claim or grievance. *See General Electric 2020* (concurring with the exclusion of a proposal from the Proponent requesting that the Company hire an investment bank to explore the sale of the Company under Rule 14a-8(i)(4), noting that “[t]he Staff’s determination was heavily influenced by the inclusion of a link in the supporting statement to prior correspondence that discussed in detail the Proponent’s personal grievance against the Company” and stating “[t]he Commission has explained that it ‘does not believe an issuer’s proxy materials are a proper forum for airing personal claims or grievances’”); *American Express Co. (Lindner)* (avail. Jan. 13, 2011) (concurring with the exclusion of a proposal to amend an employee code of conduct to include mandatory penalties for non-compliance when brought by a former employee who previously sued the company on several occasions for discrimination, defamation and breach of contract); *State Street Corp.* (avail. Jan. 5, 2007) (concurring with the exclusion of a proposal that the company separate the positions of chairman and CEO and provide for an independent chairman when brought by a former employee after that employee was ejected from the company’s previous annual meeting for disruptive conduct and engaged in a lengthy campaign of public harassment against the company and its CEO).

Notably, the Staff has consistently concurred that proposals may be excluded pursuant to Rule 14a-8(i)(4) where the proposal and supporting statements are neutrally worded and do not explicitly reveal the underlying dispute or grievance, but where the proponent has a history of confrontation with the company and that history is indicative of a personal claim or grievance within the meaning of Rule 14a-8(i)(4). For example, in *MGM Mirage* (avail. Mar. 19, 2001), the Staff concurred with the exclusion of a proposal that would require the company to adopt a written policy regarding political contributions and furnish a list of any of its political contributions submitted on behalf of a proponent who had filed a number of lawsuits against the company based on the company’s decisions to deny the proponent credit at the company’s casino and, subsequently, to bar the proponent from the company’s casinos, amongst other things. The company argued that the proponent was using the proposal to further his personal agenda, none of which was referenced in the proposal or supporting statement. *See also Pfizer, Inc.* (avail. Jan. 31, 1995) (concurring with the exclusion of a proposal related to CEO compensation saying, “the staff has particularly noted that the proposal, while drafted to address other considerations, appears to involve one in a series of

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steps relating to the longstanding grievance against the [c]ompany by the proponent,” where the proposal was submitted by a former employee who contested the circumstances of his retirement, claiming that he had been forced to retire as a result of illegal age discrimination); *International Business Machines Corp. (Ludington)* (avail. Jan. 31, 1994) (concurring with the exclusion of a proposal requesting a list of all groups and parties that receive corporate donations in excess of a specified amount, including “details and names pertinent to the gift,” where the company pointed to the proponent’s prior communications with the company over the past year trying to stop corporate donations to charities that the proponent believed supported illegal immigration, including a request that the company provide the names of individuals at the charities that the company had communicated with, and argued that the proposal was thus an attempt to gain information on the charities, harass them, and stop donations to them).

Thus, Rule 14a-8(i)(4) clearly contemplates looking beyond the four corners of a proposal for purposes of identifying the personal grievance to which the submission of the proposal relates. Here, one need not look far. The Proponent’s consistent pattern of conduct reveals his true intentions to use the shareholder proposal process in order to air his personal grievances at the Company’s annual shareholders meeting. Like the foregoing precedent, although the Proposal language is neutral, when coupled with the Proponent’s extensive history with the Company and considered as part of a well-established pattern of conduct, including at the Company’s recent annual meeting, it is clear that the Proposal is yet another attempt by the Proponent to redress his personal grievance and an abuse of the shareholder proposal process. Like the prior proposals submitted by the Proponent and the Harangozo Proponents, the Proponent has repeatedly and primarily used the shareholder proposal process as a platform for continuing to press his personal, employment-related grievances with the Company and the Supervisor. If the Company is required to include the Proposal in its 2022 proxy statement, the Company has every reasonable expectation that the Proponent would similarly choose to use his floor-time at the 2022 Annual Meeting of Shareholders to further his grievance and use the proposal process to publicly shame the Supervisor. This sort of ongoing gamesmanship, deploying neutral language in proposals to eschew exclusion under Rule 14a-8(i)(4), must not go unchecked.

Rule 14a-8(i)(4) was promulgated “because the Commission does not believe that an issuer’s proxy materials are a proper forum for airing personal claims or grievances.” Thus, in keeping with the well-established precedent, including *General Electric 2020* and *MGM*, we believe that the Proposal properly is excludable under Rule 14a-8(i)(4) because “it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” The Proposal was clearly submitted in order to abuse the shareholder proposal process to achieve the Proponent’s personal ends, which are not in the common interest of the Company’s

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shareholders, and requiring the Company to include this Proposal would allow the Proponent to continue to subvert and abuse the Rule 14a-8 process to advance his personal campaign that is not in the common interest of the Company's shareholders.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671, or Julia Chen, the Company's Executive Counsel, Corporate, Securities and Finance, at (617) 816-6013.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Brandon Smith, Chief Corporate, Securities & Finance Counsel, General Electric Company
Julia Chen, Executive Counsel, Corporate, Securities & Finance, General Electric Company
Martin Harangozo

EXHIBIT A

From: Martin Harangozo [REDACTED]
Sent: Saturday, October 23, 2021 10:11 AM
To: ~CORP ShareownerProposals <shareowner.proposals@ge.com>
Subject: Harangozo GE 2022 Shareholder Proposal

Ladies and Gentlemen,

Please include the attached shareholder proposal in the

General Electric Company Proxy Statement for voting at the 2022 shareholder meeting.

I intend to hold requisite number of General Electric Company shares until the conclusion of this meeting.

Kind regards

Martin Harangozo

I am the owner of common shares of General Electric Stock, and respectfully submit the following Share Owner Proposal.

"The Proposal: The Board of Directors are requested to consider voting a cessation of all Executive Stock Option Programs, and Bonus Programs. Rewards via a bona fide salary program are a necessity. Salary increases to deserving Executives will reward only those who productively enhance the Company's Business. Only if and when profit increases are published and compiled annually, and verified by a Certified Accounting Firm a realistic salary increase commensurate with the increase In the Company's Business can be considered. Should there be no increase in the Company's Business, or a decline in Corporate Business is published and compiled annually, and verified by a Certified Accounting Firm, no salary increase(s) will be forthcoming. Rewards via the above measurements will suffice, and remove the bonus and Executive Stock Option Program(s) permanently

The above shareholder proposal has been in the General Electric Company proxy statement many times.

Please vote for cessation of all Executive Stock Option Program, and Bonus Programs.

From: [Martin Harangozo](#)
To: [~CORP ShareownerProposals](#)
Subject: Re: Harangozo GE 2022 Shareholder Proposal
Date: Wednesday, October 27, 2021 1:40:28 PM

Thank you.

I believe that the new rules ask for contact information and a time to talk.

I believe you have my contact. Again

 Phone

 Home address

I can talk Monday, Wednesday, and Friday from 3 PM to 5 PM.

Please give me a days notice.

On Wednesday, October 27, 2021, 12:05:40 PM EDT, ~CORP ShareownerProposals <shareowner.proposals@ge.com> wrote:

Dear Mr. Harangozo,

I am writing to confirm receipt of your shareholder proposal, which was submitted to and received by GE on October 23, 2021.

Regards,

Julia

Julia L. Chen

Executive Counsel, Corporate, Securities & Finance

GE



5 Necco St. | Boston, MA 02210

EXHIBIT B

REFINITIV STREETEVENTS

EDITED TRANSCRIPT

General Electric Co Annual Shareholders Meeting

EVENT DATE/TIME: MAY 04, 2021 / 2:00PM GMT

CORPORATE PARTICIPANTS

H. Lawrence Culp *General Electric Company - Chairman & CEO*

Michael J. Holston *General Electric Company - Senior VP, General Counsel & Secretary*

Thomas W. Horton *General Electric Company - Lead Director*

CONFERENCE CALL PARTICIPANTS

Martin Harangozo

Lila Holzman

Michael Barbera

Kam Franklin

PRESENTATION

Operator

Good morning, and welcome to GE's 2021 Annual Shareholders Meeting. We do not expect any technical difficulties today. However, in the event we lose audio or webcast connection, please wait in the meeting site until we are able to resolve or provide an update.

Please refer to the GE Investor Relations website at www.ge.com/proxy for updates. The polls are open. To vote click on the Vote Here button at the bottom right corner of the webcast screen. The polls will remain open until the conclusion of the balloting portion of the meeting.

With that, I will now turn it over to GE to begin the meeting.

(presentation)

Michael J. Holston *General Electric Company - Senior VP, General Counsel & Secretary*

Good morning, and thank you to all our shareholders and guests for joining us today. This is Mike Holston, GE's Senior Vice President, General Counsel, and Board Secretary. I'm speaking to you from GE's headquarters in Boston. I'm joined in the room today by GE's Chairman and CEO, Larry Culp. Before we begin, I'd like to note that during the meeting today, we may make forward-looking statements about our expectations or predictions about the future. Because these statements are based on current assumptions and factors that involve risks and uncertainties, GE's actual performance and results may differ materially from what is said here today. Please refer to our 2020 annual report on Form 10-K, the first quarter 10-Q, and other subsequent filings the company may make with the SEC for detailed discussions of principal risks and uncertainties that could cause such differences.

The agenda for today's meeting is shown on the screen and is also available for download from the meeting website. The rules of conduct, the GE Proxy Statement, and our Annual Report are also available for download from the bottom of the screen for the webcast. Our rules of conduct are designed to ensure that we have a fair and orderly meeting.

We'll start with an update on our company's operations from our Chairman and CEO, Larry Culp.

Following Larry's presentation, we will move on to the formal part of the meeting, including voting on the management and shareholder proposals that are set forth in the proxy that was distributed to shareholders and that is also available on the meeting website.

Next, we will conduct balloting and hear from the Inspectors of Election with the preliminary vote tallies.

Following the formal portion of the meeting, we will proceed to answer shareholder questions. Questions can be submitted in writing in the lower left-hand corner of the webcast screen.

Now I'd love -- I'd like to welcome Larry to get us started with an update on the company. Larry?

First up is the election of directors.

I place before the meeting to serve as directors for the coming year the 11 individuals who were introduced at the start of the meeting by Larry and whose backgrounds and qualifications are described in more detail in the Proxy Statement.

Your Board of Directors recommends a vote for each of the director nominees.

The next item is the proposal to approve our named executives' compensation.

Your Board of Directors recommend a vote for the approval of our named executives' compensation.

The next item is ratification of Deloitte as independent auditors for 2021.

We have with us on the line today, John Rhodes, Deloitte's Lead Audit partner for the GE Audit; and Joe Ucuzoglu, who is the CEO of Deloitte.

Your Board of Directors recommends a vote for the ratification of Deloitte as independent auditors for 2021.

Last up for the management proposals is approval for a reverse stock split and reduction in our authorized stock and par value. Your Board of Directors recommends a vote for this proposal.

We will address any questions on these management proposals in a few minutes after we hear the shareholder proposals and before concluding the balloting.

Okay. Let's now consider the shareholder proposals listed in the agenda.

I understand that Martin Harangozo is on the line today to present -- to present the shareholder proposal on the multiple candidate elections.

Operator, if you could, please open the line for Mr. Harangozo.

Martin Harangozo

Good morning. Thank you. My name is Martin Harangozo. I'm grateful to be a shareholder. I love this company, people and products. I've been a shareholder more than 30 years. I've been an employee for more than 20 years. My retirement, savings and quality of life rely in part on the success of this company.

I want only the very best for this company, both short and long-term. I care enough to raise my hand to stand and to speak. I do not know of a more honorable shareholder or intention. In 1990, I joined GE on the prestigious manufacturing management program.

I worked on real projects that make real money, received raises, promotions, stock options and awards. I was encouraged to raise my hand. The Board and Chairman had sufficient confidence in the company and their leadership that they would routinely split the stock shares as they neared the \$100 level.

The stock went up tenfold, former CEO, Jack Welch video taped my shareholder meeting comments and televised them. I was the happiest engineer in the country. 20 years later, I saw nonsense accounting, nonsense purchasing, nonsense engineering, and nothing replaced hand raising.

My boss Matthew Johnson, a very obese man appears to account for our income in the year 2010 for parts that were not planned to be sold until late 2011. GE, was routinely fined by the Securities and Exchange Commission for misleading data. My boss Matthew Johnson

contradicted General Electric Company written procedures regarding accounting, purchasing, engineering, document retention, health ahead and other written procedures as a Spirit and Letter.

Matthew Johnson retaliated against those that questioned his accounting that apparently contradicted generally accepted accounting principles, Matthew Johnson lied under oath. Now the current Board and Chairman demonstrate their complete lack of confidence in the General Electric Company and their own abilities as they seek to reverse split their shares to get to \$100 share price.

Once the shares again fall to \$10, they can reverse the split the stock again to get to \$100. This is a signal of complete inability to lead all while the broader stock market sets new records many times in the last 20 years. Mr. Culp you stated, submitted in confidence to retaliate against my 2020 shareholder recommendations violating the Spirit and Letter. Clearly, we need a new board and chair. One way to accomplish this is to recommend to the board that each board seat, including the chair's seat be presented with the option of 2 candidates for each available board seat, giving shareholders the final vote regarding Director choice.

I urge all shareholders to please vote yes for shareholder proposal #1, multiple candidate elections.

Michael J. Holston *General Electric Company - Senior VP, General Counsel & Secretary*

Thank you, Mr. Harangozo. The Board recommends against this proposal for the reasons set forth on Page 64 of the proxy.

I understand that Kam Franklin is on the line today to present the shareholder proposal on the appointment of an independent board chair on behalf of Kenneth Steiner.

Operator, could you please open the line for Ms. Franklin.

[Subsequent pages/content omitted for brevity and clarity]