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

DIVISION OF
CORPORATION FINANCE

February 28, 2024

Ronald O. Mueller
Gibson, Dunn & Crutcher LLP

Re: General Electric Company (the "Company")
Incoming letter dated January 5, 2024

Dear Ronald O. Mueller:

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

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent has supplied clear documentary support evidencing the Proponent's eligibility to submit the Proposal. The requirements the Company argues must be imposed on the Proponent are not supported by a plain reading of Rule 14a-8(b)(2)(ii).

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/2023-2024-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Tel 202.955.8500
gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

January 5, 2024
(resubmitted January 10, 2024)

VIA ONLINE SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: General Electric Company
Shareholder Proposal of National Center for Public Policy Research
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 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from the National Center for Public Policy Research (the "Proponent"). We originally submitted this letter to the staff of the Division of Corporation Finance (the "Staff") on January 5, 2024 and submitted a revised version on January 10, 2024 to correct two date references (which do not alter the substance or analysis of this request). Pursuant to Rule 14a-8(j), we have concurrently sent a copy 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. 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.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information.

BACKGROUND

The Proposal was submitted to the Company by Sarah Rehberg on behalf of the Proponent on November 22, 2023 (the "Submission Date") via email and received by the Company on November 22, 2023. *See* Exhibit A. Ms. Rehberg's submission did not include any documentary evidence of the Proponent's ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares. Accordingly, the Company properly sought verification of stock ownership and other documentary support from the Proponent. Specifically, the Company sent the Proponent a letter, dated December 5, 2023, identifying a proof of ownership deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies identified (the "First Deficiency Notice").

The First Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8, Staff Legal Bulletin No. 14 (Jul. 13, 2001) ("SLB 14"), SLB 14F and SLB 14L. Specifically, the First Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient Company shares;
- that, as of the date of the First Deficiency Notice, the Company had not received any documentation evidencing the Proponent's proof of continuous ownership, as required under Rule 14a-8(b);
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record' holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements" of Rule 14a-8(b); and

- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the First Deficiency Notice.

The Company sent the First Deficiency Notice to the Proponent via email and UPS overnight delivery on December 5, 2023, which was within 14 calendar days of the Company's receipt of the Proposal. *See* Exhibit B. Scott Shepard confirmed receipt of the First Deficiency Notice via email on December 6, 2023. *See* Exhibit B.

Subsequently, on December 11, 2023, the Company received an email from Stefan Padfield, on behalf of the Proponent (the "First Response Email"), stating, "[p]lease find attached our proof of ownership." *See* Exhibit C. Attached to the email was a letter from Wells Fargo Advisors dated December 8, 2023 (the "First Wells Fargo Letter"), stating that "[a]s of December 8, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020 more than $2,000 of General Electric Company common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred." The First Wells Fargo Letter did not contain any indication that Wells Fargo was affiliated with UBS or was otherwise authorized to speak on behalf of UBS. The First Wells Fargo Letter also did not attach any documentation from UBS.

Accordingly, the Company again properly sought verification of share ownership from the Proponent. Specifically, and in accordance with SLB 14L, on December 14, 2023, which was within 14 calendar days of the Company's receipt of the First Wells Fargo Letter, the Company sent a second deficiency notice (the "Second Deficiency Notice") via email and UPS overnight delivery to the Proponent, which explained that the First Wells Fargo letter did not cure the previously identified proof of ownership deficiency, reiterated the requirements of Rule 14a-8, and explained how the Proponent could cure the procedural deficiency. *See* Exhibit D. The Second Deficiency Notice also included a copy of Rule 14a-8, SLB 14F, and SLB 14L. Specifically, the Second Deficiency Notice stated:

> Wells Fargo Advisors has not confirmed that it is the "record" holder of the Company's shares and therefore it is not clear whether Wells Fargo Advisors is the "record" holder of the Company's shares or whether a different entity is. Additionally, the Wells Fargo Letter does not state that Wells Fargo Advisors has been the "record" holder of the Proponent's shares during the three years preceding and including the Submission Date, and in fact, by seeking to rely on "cost-basis data" provided by UBS, indicates that UBS was the "record" holder for some unspecified portion of the three years preceding and including the Submission Date.

> To remedy this defect, the Proponent must obtain new proof of ownership verifying that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:
>
> (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) confirming its status as the "record" holder of the Proponent's shares and verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held through the record holder the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; . . .
>
> If the Proponent's shares were held by more than one "record" holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.

Scott Shepard confirmed receipt of the Second Deficiency Notice via email on behalf of the Proponent on December 14, 2023. *See* Exhibit D.

On December 27, 2023, the Company received an email from Mr. Padfield (the "Second Response Email") stating, "[r]egarding your 12/14/23 email and attachment, we believe our original proof of ownership letter provided all the information necessary to satisfy our relevant obligations. However, as a courtesy we are providing two additional letters (attached) to address your concerns." The email included (1) a letter from Wells Fargo Advisors dated December 27, 2023 (the "Second Wells Fargo Letter"), and (2) a letter from UBS Financial Services Inc. dated December 4, 2023 (the "UBS Letter"). *See* Exhibit E. The Second Wells Fargo Letter was identical to the First Wells Fargo Letter, except that it used an abbreviation in the Company's name and stated, "Wells Fargo N.A. is record owner of these shares." Specifically, the Second Wells Fargo Letter said:

> As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020, more than $2,000 of General Electric Co common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR

holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

The Second Wells Fargo Letter did not contain any indication that Wells Fargo Advisors or Wells Fargo N.A. were affiliated with UBS or were otherwise authorized to speak on behalf of UBS, and did not confirm that Wells Fargo Advisors or Wells Fargo N.A. had continuously served as record holder for the Proponent of sufficient shares to satisfy at least one of the Ownership Requirements. The UBS Letter stated:

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [redacted] to Wells Fargo account [redacted].

- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.

- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [redacted] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

As discussed below, the First Wells Fargo Letter, the Second Wells Fargo Letter, and the UBS Letter (collectively, the "Financial Institution Letters") are insufficient to cure the ownership deficiency because they are not statements from the record holders of the Proponent's securities verifying that as of the Submission Date the Proponent had satisfied any of the continuous ownership requirements of Rule 14a-8(b)(1) for any of the full time periods set forth in the rule (specifically, the three-year holding period as the Financial Institution Letters purport to verify holdings of "more than $2,000"). As of the date of this letter, the Company has not received any further proof of ownership from the Proponent.

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish Eligibility To Submit The Proposal Despite Proper Notice.

A. Rule 14a-8(b)(1)

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal, a shareholder proponent must have continuously held:

> (A) at least $2,000 in market value of the company's securities entitled to vote on the proposal for at least three years preceding and including the Submission Date;
>
> (B) at least $15,000 in market value of the company's securities entitled to vote on the proposal for at least two years preceding and including the Submission Date; or
>
> (C) at least $25,000 in market value of the company's shares entitled to vote on the proposal for at least one year preceding and including the Submission Date.

Each of these ownership requirements were specifically described by the Company in both the First Deficiency Notice and the Second Deficiency Notice.

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. SLB 14 specifies that when the shareholder is not the registered holder, the shareholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the shareholder may do by one of the ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

SLB 14F explains that proof of ownership letters may fail to satisfy Rule 14a-8(b)(1)'s requirement if they do not verify ownership "for the entire one-year period preceding and including the date the proposal [was] submitted." This may occur if the letter verifies ownership as of a date before the submission date (leaving a gap between the

verification date and the submission date) or if the letter "fail[s] to verify the [shareholder's] beneficial ownership over the required full one-year period preceding the date of the proposal's submission." SLB 14F. SLB 14F further notes, "The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held."[1] The guidance in SLB 14F remains applicable even though Rule 14a-8 has since been amended to provide the tiered ownership thresholds described above. In each case, consistent with the Staff's guidance in SLB 14F and as required by Rule 14a-8(b), a shareholder proponent must submit adequate proof from the record holder of its shares demonstrating such proponent's continuous ownership of the requisite amount of company shares for the requisite time period.

As discussed in the "Background" section above, the Financial Institution Letters, taken together or separately, do not satisfy what SLB 14F describes as the "highly prescriptive" requirements of Rule 14a-8(b), and the Proposal may therefore be excluded. After receiving the First Wells Fargo letter, the Company timely provided the Second Deficiency Notice, which, consistent with SLB 14L identified the specific defects in the Proponent's proof of ownership submissions and described how the deficiencies could be remedied. Thereafter, the Proponent failed to timely correct the deficiency.

B. The Financial Institution Letters Fail To Cure The Deficiency Because The Financial Institution Letters Fail To Demonstrate Continuous Ownership Of Company Shares For The Requisite Period

The Financial Institution Letters are insufficient because they do not satisfy Rule 14a-8(b)(2)(ii)'s requirement of a written statement from the "record" holder of the Proponent's securities demonstrating that as of the submission date the Proponent had satisfied one of the ownership requirements of Rule 14a-8(b). Specifically, the Second Wells Fargo letter confirms that Wells Fargo N.A. is the record holder of the Proponent's Company shares, but does not confirm that Wells Fargo N.A. has been the record holder of the Proponent's shares continuously for the entire period purportedly covered by the letter (*i.e.*, November 20, 2020 through December 27, 2023). In fact, both the First Wells Fargo Letter and the Second Wells Fargo Letter explicitly state that the duration of the holdings discussed in the letters is based on information obtained from UBS. As such, Wells Fargo Advisors has failed to provide adequate documentation confirming that it or one of its affiliates has

[1] In Staff Legal Bulletin No. 14G (Oct. 16, 2012), the Staff stated its view that a proof of ownership letter from an affiliate of a DTC participant satisfies the requirement to provide a proof of ownership letter from a DTC participant since the affiliate should be in a position to verify its customers' ownership of securities "by virtue of the affiliate relationship."

been the record holder of the Proponent's shares continuously for a period sufficient to satisfy one of the Ownership Requirements and it has not otherwise shown that it is authorized or in a position to independently verify the Proponent's ownership for the period during which Wells Fargo N.A. was not the record holder of the Proponent's shares.[2]

Notably, the UBS Letter itself does not provide any identifying information regarding the issuers of the 95 securities purportedly covered, the number of shares purportedly held, or the duration of the purported holdings. In fact, the UBS Letter only purports to verify that the "October 2023 Wells Fargo statement for account [redacted]" accurately reflects the "original purchase dates and purchases prices that were transmitted by UBS Financial Services to Wells Fargo." The UBS Letter does not attach the October 2023 Wells Fargo statement for account [redacted]. However, even if the UBS Letter included such an account statement, the Staff has consistently stated that account statements are insufficient to demonstrate continuous ownership. *See* SLB 14 (noting that a shareholder's monthly, quarterly or other periodic investment statements are insufficient to demonstrate continuous ownership of securities). Moreover, the UBS Letter does not address the Proponent's holding of the Company's shares as it does not identify any of the 95 companies in which the Proponent previously held shares at UBS Financial Services. Finally, the UBS Letter does not confirm that Wells Fargo is authorized to make representations regarding the Proponent's ownership of shares on UBS's behalf.

In this situation, as explained in both the First Deficiency Notice and the Second Deficiency Notice, each record holder must provide proof of ownership for the period in which they held the shares, as was done for example by the record holders in *The AES Corp.* (avail. Jan. 21, 2015) (providing one ownership letter from BNY Mellon verifying the proponent's ownership from October 20, 2013 through October 31, 2013 and a second letter from State Street verifying the proponent's ownership from November 1, 2013 through October 20, 2014). The Staff has consistently concurred with the exclusion of proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) where, after receiving proper notice from a company, the proof of ownership submitted failed to establish that as of the date the shareholder submitted the proposal the shareholder had continuously held the requisite amount of company securities for the entire required period. *See Amazon.com, Inc. (Phyllis Ewen Trust)* (avail. Apr. 3, 2023) (concurring in the exclusion of a shareholder proposal

[2] Although the First Wells Fargo Letter and the Second Wells Fargo Letter state that they are relying on "cost-basis data that UBS transferred to us," that statement does not address the standards of continuous ownership for purposes of Rule 14a-8 and does not indicate that Wells Fargo is authorized to make representations on behalf of UBS regarding the Proponent's ownership of shares.

when the proponent provided proof of ownership of company shares that covered a holding period of only 122 days); *see also Starbucks Corp.* (avail. Dec. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring with the exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one-year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012); *Union Pacific Corp.* (avail. Mar. 5, 2010) (letter from broker stating ownership for one year as of November 17, 2009 was insufficient to prove continuous ownership as of November 19, 2009); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

When a proponent's shares were transferred during the applicable holding period, the proponent can satisfy Rule 14a-8(b)'s requirement to provide sufficient proof of continuous ownership by submitting letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership. For example, in *Associated Estates Realty Corp.* (avail. Mar. 17, 2014), the proponent submitted letters from its introducing broker and the two record holders that held the proponent's shares during the previous one-year period. The first record holder's letter confirmed that the proponent's account held the company's securities "until December 7, 2012 on which dates the [s]hares were transferred out," and the second record holder's letter confirmed that it "became the registered owner . . . on December 7, 2012 . . . when the shares were transferred . . . at the behest of [the proponent] as a broker to broker transfer between accounts . . . ." Similarly, in *Bank of America Corp.* (avail. Feb. 29, 2012), the proponent provided proof of ownership of the company's shares by submitting letters from TD Ameritrade, Inc. and Charles Schwab & Co. The TD Ameritrade letter confirmed ownership of the company's shares "from December 03, 2009 to April 21, 2011," and the Charles Schwab letter confirmed that the company's shares "have been held in this account continuously since April 21, 2011." *See also Moody's Corp.* (avail. Jan. 29, 2008) (the proponent's continuous ownership of the company's stock was verified by two letters, with the first letter stating that "[a]ll securities were transferred from Morgan Stanley on November 8, 2007" and the second letter stating that the proponent transferred the company's securities into his account on November 8, 2007); *Eastman Kodak Co.* (avail. Feb. 19, 2002) (the proponent provided letters from Merrill Lynch & Co., Inc. and Salomon Smith Barney Inc. to demonstrate his continuous ownership, with the Merrill Lynch letter stating that the proponent's shares were "transferred to Salomon Smith Barney Inc. on 09-28-2001" and the Salomon Smith Barney letter confirming that the shares were "transferred over from Merrill Lynch on 09/28/01"); *Comshare, Inc.* (avail. Sept. 5, 2001)

(the proponent demonstrated sufficient ownership in response to the company's deficiency notice by providing two broker letters, with one letter stating that the proponent owned at least $2,000 of the company's stock "from March 30, 2000 until March 26, 2001 when the account was transferred to Charles Schwab," and the second letter stating that the proponent has held the shares "continuously at Charles Schwab & Co., Inc. since March 26, 2001 to present").

In this instance, consistent with the foregoing precedent, the Proponent was required to provide documentary evidence from each record holder verifying that the end date of the first record holder's holding period matched the start date of the second record holder's holding period, showing that the Proponent maintained continuous ownership throughout the three-year period despite the change in record holders. As such, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal because the Proponent failed to provide adequate documentary evidence of ownership of Company shares notwithstanding that the Second Deficiency Notice reiterated the requirements of Rule 14a-8, and explained how the Proponent could cure the procedural deficiency. Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

II. Waiver Of The 80-Day Requirement In Rule 14a-8(j)(1) Is Appropriate.

We further request that the Staff waive for good cause the 80-day filing requirement set forth in Rule 14a-8(j). Rule 14a-8(j)(1) requires that, if a company "intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission." However, Rule 14a-8(j)(1) allows the Staff to waive the deadline if a company can show "good cause."

The Staff previously has granted waivers in similar circumstances where the reason for the delayed submission of a request for "no action" was that the company had been waiting for a response from the proponent to correct deficiencies in the proponent's submission. *See, e.g.*, *Exxon Mobil Corp.* (avail. Feb. 13, 2017); *Toll Brothers, Inc.* (avail. Jan. 10, 2006); *Toll Brothers, Inc.* (avail. Jan. 5, 2006); *E*TRADE Group, Inc.* (avail. Oct. 31, 2000); *PHP Healthcare Corp.* (avail. Aug. 25, 1998).

We note that:

- The Company sent the First Deficiency Notice to the Proponent via email on December 5, 2023, within 14 days of the Company's receipt of the Proposal on November 22, 2023. See Exhibit B.

- The Company sent the Second Deficiency Notice to the Proponent via email on December 14, 2023, within 14 days of the Company's receipt of the First Response Email and the First Wells Fargo letter on December 11, 2023. *See* Exhibit C and Exhibit D.

- The Proponent sent the Second Response Email on December 27, 2023, the day before the deadline for the Proponent to respond to the Second Deficiency Notice, and we originally filed this letter on January 5, 2024 (and submitted a revised version on January 10, 2024 to correct two date references). *See* Exhibit E.

The Company currently intends to file its definitive 2024 Proxy Materials on March 14, 2024, which means that the last day to have satisfied the 80-day requirement was December 25, 2023. Because the Company fully complied with the requirements set forth in Rule 14a-8, SLB 14F, and SLB 14L to send the Proponent both of the Deficiency Notices and the Proponent transmitted its response on the day before its deadline to respond to the Second Deficiency notice, which was after the Company's deadline to file this letter, we believe that there is "good cause" for not satisfying the 80-day requirement. Therefore, we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

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 2024 Proxy Materials.

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 Kira Schwartz, the Company's Executive Counsel, Corporate, Securities and Finance, at (617) 306-3079.

Sincerely,

Ronald O. Mueller

cc: Brandon Smith, Chief Corporate, Securities & Finance Counsel, General Electric Company
Kira Schwartz, Executive Counsel, Corporate, Securities & Finance, General Electric Company
Scott Shepard, National Center for Public Policy Research
Sarah Rehberg, National Center for Public Policy Research

Attachments

GIBSON DUNN

EXHIBIT A

November 22, 2023

Via Email and FedEx to

Corporate Secretary
General Electric Company Executive Offices
5 Necco Street
Boston, MA 02210
shareholder.proposals@ge.com

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the General Electric (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding $2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2024 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal December 11, 2023 or December 12, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [redacted] so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a "no-action" letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [redacted].

Sincerely,

Scott Shepard
FEP Director

Enclosures: Shareholder Proposal

Reduce Company Greenwashing Risk

WHEREAS: Shareholders must protect our assets against potentially unfulfillable Company ESG promises, including the extent to which the Company can reduce Scope 1, 2, and 3 greenhouse gas (GHG) emissions.

The Securities and Exchange Commission (SEC) has taken enforcement actions related to Environmental, Social, Governance (ESG) issues or statements by companies who misrepresent or engage in fraud related to ESG efforts.[1]

In 2021, the SEC created the Climate and ESG Task Force in its Division of Enforcement.[2] The focus of the Task Force is "to identify any material gaps or misstatements" in disclosure of climate risks and analyze "compliance issues relating to investment advisers' and funds' ESG strategies."[3]

The Task Force has taken numerous enforcement actions including charging Goldman Sachs for policies and procedures failures related to ESG investments, resulting in a $4 million penalty,[4] and charging DWS Investment Management Americas Inc. in part for misstatements regarding its ESG investment process that resulted in an overall $25 million in penalties.[5]

The SEC has proposed to require companies to disclose information about their Scope 1 and 2 emissions, and to require them to disclose Scope 3 emissions "if material *or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions*."[6]

The Environmental Protection Agency defines Scope 3 emissions as, "the result of activities from assets not owned or controlled by the reporting organization, but that the organization indirectly affects in its value chain."[7] Put differently, "Scope 3 emissions for one organization are the scope 1 and 2 emissions of another organization."[8] This means that Scope 3 emissions are already counted as another entity's emissions, and are external to the reporting company, such as product use and how employees commute.[9]

Voluntary carbon-reduction commitments create risk of SEC enforcement without providing clear benefit to the climate or other values.

In August 2023, the Global Climate Intelligence Group asserted, "There is no climate emergency."[10] The declaration includes 1,609 signatories and "oppose[s] the harmful and unrealistic net-zero CO2 policy proposed for 2050."[11]

A June 2023 study by the Energy Policy Research Foundation found that net zero advocates have misconstrued the International Energy Agency's position on new oil and gas investment and that it has

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[1] https://www.sec.gov/securities-topics/enforcement-task-force-focused-climate-esg-issues
[2] https://www.sec.gov/news/press-release/2021-42
[3] https://www.sec.gov/news/press-release/2021-42; https://www.sec.gov/securities-topics/enforcement-task-force-focused-climate-esg-issues
[4] https://www.sec.gov/news/press-release/2022-209
[5] https://www.sec.gov/news/press-release/2023-194
[6] https://www.sec.gov/news/press-release/2022-46
[7] https://www.epa.gov/climateleadership/scope-3-inventory-guidance
[8] https://www.epa.gov/climateleadership/scope-3-inventory-guidance
[9] https://www.epa.gov/climateleadership/scope-3-inventory-guidance
[10] https://clintel.org/wp-content/uploads/2023/08/WCD-version-081423.pdf
[11] https://clintel.org/wp-content/uploads/2023/08/WCD-version-081423.pdf

made questionable assumptions and milestones for NZE about government policies, energy and carbon prices, behavioral changes, economic growth, and technology maturity.[12]

SUPPORTING STATEMENT: General Electric has voluntarily committed to being a net-zero company by 2050, even when it comes to the Scope 3 emissions "for its sold products…."[13] The Company has done so even though it has failed to report on its evaluation of the technological or financial feasibility of such commitments. Given the SEC's climate and ESG enforcement actions, the Company must exercise caution and provide transparency about such commitments.

RESOLVED: Shareholders request the Company produce a report analyzing the risks arising from voluntary carbon-reduction commitments.

[12] https://assets.realclear.com/files/2023/06/2205_a_critical_assessment_of_the_ieas_net_zero_scenario_esg_and_the_cessation_of_investment_in_new_oil_and_gas_fields.pdf

[13] https://www.ge.com/sites/default/files/ge2022_sustainability_report.pdf#page=19; https://www.ge.com/sites/default/files/ge2022_sustainability_report.pdf#page=25

GIBSON DUNN

EXHIBIT B

[redacted]

From: Scott Shepard [redacted]
Sent: Wednesday, December 6, 2023 8:30 AM
To: Abshez, Natalie
Cc: Mueller, Ronald O.
Subject: Re: General Electric Company - Deficiency Notice (National Center for Public Policy Research)

[WARNING: External Email]

Thanks, Natalie. Confirmed.

On Tue, Dec 5, 2023 at 5:11 PM Abshez, Natalie <NAbshez@gibsondunn.com> wrote:

> Mr. Shepard,
>
> On behalf of General Electric Company, attached please find correspondence regarding the shareholder proposal you submitted on behalf of National Center for Public Policy Research. A paper copy of this correspondence will be delivered to you via UPS as well.
>
> We would appreciate you kindly confirming receipt of this correspondence.
>
> Best,
>
> Natalie
>
> **Natalie Abshez** (She/her/hers)
> Associate Attorney
>
> T: +1 415.393.4649 | M: +1 202.768.2268
> NAbshez@gibsondunn.com
>
> **GIBSON DUNN**
> Gibson, Dunn & Crutcher LLP
> 555 Mission Street Suite 3000, San Francisco, CA 94105-0921
>
>

--
Scott Shepard
Director
Free Enterprise Project
National Center for Public Policy Research

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Tel 202.955.8500
gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

December 5, 2023

VIA OVERNIGHT MAIL AND EMAIL
Scott Shepard
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC
[redacted]

Dear Mr. Shepard:

I am writing on behalf of General Electric Company (the **"Company"**), which on November 22, 2023, received the shareholder proposal entitled "Reduce Company Greenwashing Risk" that you submitted via email on November 22, 2023 (the **"Submission Date"**) on behalf of National Center for Public Policy Research (the **"Proponent"**) for inclusion in the proxy statement for the Company's 2024 Annual Meeting of Shareholders pursuant to Securities and Exchange Commission (**"SEC"**) Rule 14a-8 (the **"Proposal"**).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention and which you and the Proponent should correct as described below if the Company is to consider the Proponent to have properly submitted the Proposal. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

(1) $2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;

(2) $15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or

(3) $25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an **"Ownership Requirement,"** and collectively, the **"Ownership Requirements"**).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, while the submission letter states that proof of ownership will be provided, to date the Company has not received proof that the Proponent has satisfied any of the Ownership Requirements. To

remedy this defect, the Proponent must submit sufficient proof that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or

(2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (**"DTC"**), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf. If a shareholder's shares are held through DTC, the shareholder needs to obtain and submit to the Company proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to obtain and submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to obtain and submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC

participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 1050 Connecticut Avenue N.W., Washington, D.C. 20036. Alternatively, you may transmit any response by email to me at rmueller@gibsondunn.com. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

Ronald O. Mueller

cc: Brandon Smith, Chief Corporate, Securities & Finance Counsel, General Electric Company
Kira Schwartz, Executive Counsel, Corporate, Securities & Finance, General Electric Company

Enclosures

GIBSON DUNN

EXHIBIT C

[redacted]

From: Stefan Padfield [redacted]
Sent: Monday, December 11, 2023 12:59 PM
To: Abshez, Natalie
Cc: Mueller, Ronald O.
Subject: General Electric Company - Deficiency Notice (National Center for Public Policy Research)
Attachments: NCPPR GE.pdf

[WARNING: External Email]

Please find attached our proof of ownership. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
https://nationalcenter.org/ncppr/staff/stefan-padfield/

WELLS FARGO Advisors

1650 Tysons Boulevard
Suite 500
McLean, Virginia 22102

Tel: 703.893.5700
Fax: 703.448.0406

December 8, 2023

National Center for Public Policy Research Inc
[redacted]

RE: Verification of Assets for Account Number ending in [redacted]

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [redacted]

(ii) As of December 8, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020 more than $2,000 of General Electric Company common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group
[redacted]

Investment and Insurance Products are:
- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank affiliate**

GIBSON DUNN

EXHIBIT D

[redacted]

From: Scott Shepard [redacted]
Sent: Thursday, December 14, 2023 1:00 PM
To: Abshez, Natalie
Cc: Mueller, Ronald O.; Stefan Padfield
Subject: Re: General Electric Company - Second Deficiency Notice (National Center for Public Policy Research)

[WARNING: External Email]

Received.

Best,

Scott

On Thu, Dec 14, 2023, 3:57 PM Abshez, Natalie <NAbshez@gibsondunn.com> wrote:

> Mr. Shepard,
>
> On behalf of General Electric Company, attached please find follow-up correspondence regarding the shareholder proposal you submitted on behalf of National Center for Public Policy Research. A paper copy of this correspondence will be delivered to you via UPS as well.
>
> We would appreciate you kindly confirming receipt of this correspondence.
>
> Best,
>
> Natalie
>
> **Natalie Abshez** (She/her/hers)
> Associate Attorney
>
> T: +1 415.393.4649 | M: +1 202.768.2268
> NAbshez@gibsondunn.com
>
> **GIBSON DUNN**
> Gibson, Dunn & Crutcher LLP
> 555 Mission Street Suite 3000, San Francisco, CA 94105-0921

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Tel 202.955.8500
gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

December 14, 2023

VIA OVERNIGHT MAIL AND EMAIL
Scott Shepard
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC
[redacted]

Dear Mr. Shepard:

I am writing on behalf of General Electric Company (the **"Company"**), which on November 22, 2023, received the shareholder proposal entitled "Reduce Company Greenwashing Risk" that you submitted via email on November 22, 2023 (the **"Submission Date"**) on behalf of National Center for Public Policy Research (the **"Proponent"**) for inclusion in the proxy statement for the Company's 2024 Annual Meeting of Shareholders pursuant to Securities and Exchange Commission (**"SEC"**) Rule 14a-8 (the **"Proposal"**). In the deficiency notice the Company sent you on December 5, 2023, we notified you of the requirements of Rule 14a-8 and how to cure the procedural deficiencies associated with the Proposal (the **"Deficiency Notice"**). The purpose of this second deficiency notice is to notify you of the defects associated with the response letter from Wells Fargo Advisors, dated December 8, 2023 (the **"Wells Fargo Letter"**), that the Company received on December 11, 2023.

As previously noted in the Deficiency Notice, Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

(1) $2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;

(2) $15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or

(3) $25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an **"Ownership Requirement,"** and collectively, the **"Ownership Requirements"**).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date the Company has not received adequate proof that the Proponent has satisfied any of the Ownership Requirements. In this regard, we note that the Wells Fargo Letter asserts the following:

> "(i) [the Proponent] maintain[s] a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [redacted].
>
> (ii) As of December 8, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020 more than $2,000 of General Electric Company common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred."

Wells Fargo Advisors has not confirmed that it is the "record" holder of the Company's shares and therefore it is not clear whether Wells Fargo Advisors is the "record" holder of the Company's shares or whether a different entity is. Additionally, the Wells Fargo Letter does not state that Wells Fargo Advisors has been the "record" holder of the Proponent's shares during the three years preceding and including the Submission Date, and in fact, by seeking to rely on "cost-basis data" provided by UBS, indicates that UBS was the "record" holder for some unspecified portion of the three years preceding and including the Submission Date.

To remedy this defect, the Proponent must obtain new proof of ownership verifying that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

(1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) confirming its status as the "record" holder of the Proponent's shares and verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held through the record holder the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or

(2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent's shares were held by more than one "record" holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (**"DTC"**), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf. If a shareholder's shares are held through DTC, the shareholder needs to obtain and submit to the Company proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to obtain and submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

(2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to obtain and submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from

the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 1050 Connecticut Avenue N.W., Washington, D.C. 20036. Alternatively, you may transmit any response by email to me at rmueller@gibsondunn.com. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

Ronald O. Mueller

cc: Brandon Smith, Chief Corporate, Securities & Finance Counsel, General Electric Company
Kira Schwartz, Executive Counsel, Corporate, Securities & Finance, General Electric Company

Enclosures

GIBSON DUNN

EXHIBIT E

[redacted]

From: Stefan Padfield [redacted]
Sent: Wednesday, December 27, 2023 12:22 PM
To: Abshez, Natalie
Subject: General Electric Company - Second Deficiency Notice (National Center for Public Policy Research)
Attachments: NCPPR GE.pdf; ACAT Cost Basis Confirmation Letter.pdf

[WARNING: External Email]

Regarding your 12/14/23 email and attachment, we believe our original proof of ownership letter provided all the information necessary to satisfy our relevant obligations. However, as a courtesy we are providing two additional letters (attached) to address your concerns. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
https://nationalcenter.org/ncppr/staff/stefan-padfield/

WELLS FARGO **Advisors**

1650 Tysons Boulevard
Suite 500
McLean, Virginia 22102

Tel: 703.893.5700
Fax: 703.448.0406

12/27/2023

National Center for Public Policy Research Inc
[redacted]

RE: Verification of Assets for Account Number ending in [redacted]

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [redacted]

(ii) As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020, more than $2,000 of General Electric Co common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos
Senior Vice President - Investments
Branch Manager – Private Client Group
[redacted]

Investment and Insurance Products are:

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

UBS Financial Services Inc.
1000 Harbor Blvd
3rd Floor
Weehawken, NJ 07086

ubs.com/fs

Confirmation

National Center for Public Policy Research
[redacted]

12/4/2023

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Sir,

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [redacted] to Wells Fargo account [redacted]
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [redacted] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

Questions
If you have any questions about this information, please contact the UBS Wealth Advice Center at 877-827-7870.

Sincerely,

Evan Yeaw
Head Wealth Advice Center Operations
UBS Financial Services

February 2, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request from the General Electric Company Regarding Shareholder Proposal by the National Center for Public Policy Research ("Proponent")

Ladies and Gentlemen:

This correspondence is in response to the letter of Ronald O. Mueller on behalf of General Electric Company (the "Company" or "GE") dated January 5, 2024, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

To the best knowledge of Proponent, the Company's no-action request ("NAR") is substantively identical (setting aside the Company's request for a waiver of the 80-day filing requirement) to the following NARs, each of which was submitted by the Company's counsel, Gibson, Dunn & Crutcher LLP, on behalf of the identified clients.

- NAR dated December 30, 2023, submitted on behalf of United Parcel Service, Inc. ("UPS NAR").
- NAR dated January 1, 2024, submitted on behalf of The Kraft Heinz Company ("Kraft NAR").
- NAR dated January 3, 2024, submitted on behalf of PepsiCo, Inc. ("Pepsi NAR").

Accordingly, and in the interest of efficiency, following our discussion of the Company's request for a waiver of the 80-day filing requirement, we are attaching here as Appendix I our reply to the UPS NAR, and as Appendix II a relevant portion of our reply to the Kraft NAR. Beyond the filing requirement issue addressed below, Proponent's substantive arguments in response to the Company's NAR are fully set forth in Appendix I and Appendix II, and any factual discrepancies are immaterial beyond the following: The relevant Wells Fargo Letter here, dated December 6, 2023, stated unambiguously that: "As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020, more than $2,000 of General Electric Co common stock."[1]

[1] A copy of the relevant Wells Fargo Letter can be found attached as Exhibit C of the Company's NAR.

Waiver Of The 80-Day Requirement in Rule 14a-8(j)(1) Is Not Appropriate.

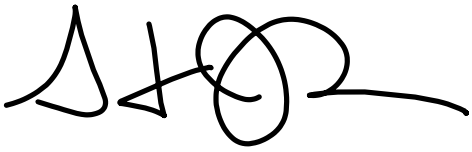
The Company requests that the Staff waive for good cause the 80-day filing requirement set forth in Rule 14a-8(j) because the last day to have satisfied the 80-day requirement was December 25, 2023, but the Company did not submit its request until January 5, 2024. The Company argues that the waiver is appropriate when "the company had been waiting for a response from the proponent to correct deficiencies in the proponent's submission." However, the Company had received the requisite response by December 11, 2023, when it received the letter from Wells Fargo dated December 6, 2023, which stated unambiguously that: "As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 20, 2020, more than $2,000 of General Electric Co common stock." This letter fully satisfied Proponent's proof-of-ownership obligations, and the Company's self-serving attempt to conjure up a non-existent rule requiring proponents to provide proof of ownership from every record holder throughout the relevant coverage period should not be permitted to constitute a "good faith" justification for failing to timely file its NAR. It is worth recalling here that the Staff has previously cautioned companies against attempting to use an "overly technical reading of proof of ownership letters" in an attempt to create proof-of-ownership problems:

> Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive…. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.[2]

Here, the Wells Fargo Letter was "clear and sufficiently evidences the requisite minimum ownership requirements." Accordingly, the Company's waiver request should be denied.

Sincerely,

Scott Shepard
FEP Director
National Center for Public Policy Research



[2] Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L").

Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Ronald O. Mueller (rmueller@gibsondunn.com)

APPENDIX I (below)

January 26, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request from United Parcel Service, Inc., Regarding Shareholder Proposal by the National Center for Public Policy Research

Ladies and Gentlemen:

This correspondence is in response to the letter of Elizabeth A. Ising on behalf of United Parcel Service, Inc. (the "Company" or "UPS") dated December 30, 2023, requesting that your office (the "Commission" or "Staff") take no action if the Company omits our shareholder proposal (the "Proposal") from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY'S CLAIMS

The Company seeks to exclude the Proposal from the 2024 Proxy Materials pursuant to Rule 14a-8(b)(1) and Rule 14a-8(f)(1) because it claims Proponent failed to timely provide proof of the requisite stock ownership.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. The Proponent Timely Provided Proof of the Requisite Stock Ownership

The Company argues it may exclude our Proposal because we did not satisfy the ownership requirements of Rule 14a-8(b). That rule requires in relevant part that we:

> [S]ubmit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you

> submitted your proposal, you continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively.[3]

We have satisfied our obligations under this rule by submitting a timely letter dated December 27, 2023, to the Company from Wells Fargo Advisors (the "Wells Fargo Letter"), which affirmed unambiguously that: "As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 16, 2020, more than $2,000 of United Parcel Service Inc common stock." The Company's arguments to the contrary are unavailing.[4]

A. The Commission and Staff Have Established the Proof of Ownership That May Be Required of Proponents; it Does Not Include Any Communications from past Record Holders, and Such a Requirement May Not Now Be Invented and Retroactively Applied.

The Company's position finds no support in the text of Rule 14a-8(b). As we have just noted, the rule is that proponents must submit a statement from "the 'record' holder of [our] securities" confirming the relevant value of our ownership over the relevant period. Rule 14a-8(b) (emphasis added). It nowhere adds an additional obligation on proponents that they also provide redundant proof of ownership letters from *former* record holders of the stock – holders with whom the proponents presumably no longer have a business relationship and who therefore have neither motivation nor interest in writing such letters.

For the Staff suddenly to conjure such an additional obligation now, one that should have been included in the express terms of 14a-8(b) if intended, or at least (if perhaps inappropriately) added as an additional requirement in a Staff Legal Bulletin for application after the issuance of such a bulletin,[5] would provide a clear instance of the Staff acting not in fidelity to the rules that it and the Commission have developed, but in an arbitrary, capricious and *ex post* manner. We and others have argued in the past that such behavior is already impermissibly embedded in the no-action review process, which grants the Staff an impermissible amount of opportunity for the application of bias on the basis of the personal policy preferences of the Staff.[6]

Such a decision would undermine the no-action review process in another fundamental way. In recent court filings SEC counsel has argued that the Commission's no-action review process, overseen by unelected and unappointed Staff members without much opportunity for Commissioner review and input, is within the statutory remit of the SEC despite there being no statutory language that either establishes or even hints at such a process.[7] SEC counsel, though, then pivots to say that while the review process is statutorily appropriate, it is so informal as to allow the Staff to issue opinions without

[3] Rule 14a-8(b)(2)(ii)(A).
[4] The Company received two letters from Wells Fargo, one dated December 27, 2023, and another dated December 6, 2023. The Company's argument does not turn on any distinction between these two letters.
[5] The Company's reliance on language in staff legal bulletins is addressed below.
[6] Brief for Petitioners at 31-32, Nat'l Ctr. for Pub. Pol'y Res. v. SEC, No. 23-60230 (5th Cir. July 14, 2023), ECF No. 62-1.
[7] Brief for SEC at 56-61, Nat'l Ctr. for Pub. Pol'y Res. v. SEC, No. 23-60230 (5th Cir. Sept. 13, 2023), ECF No. 79-1.

explanation or for any reliable route to meaningful review of the decisions to be available.[8] It makes this claim even though the SEC (and its Staff) appears never to have itself treated its no-action decisions as "informal," in that it has never issued a no-action letter but then brought action against a company for having omitted a proposal. A reasonable response to these interlocking but contradictory claims is that the review process is not merely informal; it is *ulta vires*, with the Commission and its staffers not only illegally establishing this process but also themselves treating it not as informal but as binding on all parties and on itself, with rejected proponents facing no option but to incur the vast expense of litigation under often impossible time constraints. And then it compounds the improper nature of its unlawful proceedings by pretending that it treats its unauthorized procedures as informal to excuse the fact that it does not conduct these "informal" procedures with the rigor, regularity, and transparency required of government functions that *actually are authorized*.

This is, to err by delicacy, an attenuated argument that drags in its wake eye-catching implications, such as that if an agency makes up a power not granted to it and so not constrained by any statutory text, it can then apply that unlawful power without safeguards such as those established by the Administrative Procedures Act ("APA"), thereby freeing the unauthorized powers illegally seized by federal agencies to be wielded with the least constraint and therefore potentially for purposes the most inimical to our free republic of constrained and limited government. That is a position that may well give our judicial authorities pause, and perhaps be used as evidence that agencies really ought not to be trusted with any deference whatever in determining their own powers or the constraints on those powers.

Were the Staff to agree here with the Company it would illustrate the fundamental incoherency of the SEC's silently authorized (by the Securities Exchange Act)/statutorily unconstrained (by the APA), formal and final (as to practical effect)/informal and nonbinding (by nominal pretext) position. While the Staff requires shareholder proponents to provide proof of ownership letters from record holders to corporations, it has refused to require those record holders to provide the ownership letters to the proponents in the first instance. Apparently unauthorized powers not granted by statutory rescript can only run so far – far enough to constrain usually not-terribly-well-funded shareholders, but *not* to constrain giant banks and investment houses with large legal staffs and legal budgets, who might long ago have challenged the whole cobbled-together no-action process had the Staff made demands of them.

Among a variety of other problems, this half-way and certainly novel articulation of Staff authority effectively hands to record holders veto power over which proponents may file and which may not. As we have seen repeatedly in recent years, banks and investment houses have shown no shyness whatever in making profound business decisions that appear explicable only as expressions of the personal policy preferences of the corporations' executives (or the executives of the corporations who act as stewards of other people's investments but who arrogate to themselves the power of those clients' money to "force behaviors" that match their political and personal inclinations on companies their clients have invested heavily in).[9] While the Staff's unwillingness or incapacity to require record

[8] Id. at 27-29.

[9] See, e.g., https://www.commerce.senate.gov/2023/9/sen-cruz-s-investigation-leads-intuit-to-end-discriminatory-policy-against-firearms-businesses ; https://www.dailysignal.com/2023/06/21/kentuckys-daniel-cameron-scores-win-threat-banks-cutting-conservatives/ ; https://www.breitbart.com/politics/2023/03/03/donald-trump-jr-wins-pnc-bank-reverses-course-blames-cutting-ties-mxm-news-good-faith-error/ ; https://www.washingtonexaminer.com/opinion/beltway-confidential/2748853/why-is-bank-of-america-canceling-

holders to issue ownership letters has resulted in proponents regularly facing an often frustrating and time-consuming process to get them, it is reasonable given background financial industry company behavior to consider it probable that some record holder might refuse to issue proof of ownership letters because the company's executives (or whomever held the specific decision-making authority) objected to the concerns that animated the relevant shareholder proponent. In fact, we at NCPPR have significant reason to believe that it has already happened to us.

Were the Staff to take the Company's position, then it would have established that in the shareholder proposal submission process, (1) proponents must provide proof-of-ownership letters issued by parties that themselves have no obligation to issue such letters, giving the issuers arbitrary control over citizens' abilities to exercise statutorily or regulatory explicated civil rights; (2) proponents must also provide proof-of-ownership letters from *former* record holders for a period of years, thus depriving proponents who have been deprived by private issuers of civil rights on partisan grounds even the minimal self-help opportunity of switching record holders, as letters that the initial record holder has already refused to provide on policy grounds will still be required *after* change of record holders; and that (3) this wholly arbitrary and unregulated private restriction on civil rights arises *even though there exists not the slightest legitimate concern that the proof-of-ownership letters issued by the new record holder lack even a soupcon of reliability*, as we will establish in the following section.

It would take some invention to come up with a decision that the Staff could reach that would more elegantly demonstrate systemic arbitrariness, capriciousness, potential for impermissible bias and the fundamental illegitimacy of the whole statutorily unauthorized no-action review process. Too, as a general matter, a regulatory agency that has the power to force A to provide a letter from B to C also enjoys the power to compel B to produce the letter in the first place. The Staff's tacit admission that the SEC lacks the authority to require production of the proof-of-ownership letters *ab initio* appears to provide significant weight to the conclusion that despite its justificatory dance of the butterflies, it does not legally possess any of the powers that it wields in this process, and is in fact a wholly unwonted interloper in the shareholder-proposal process.

B. The Language in Proponent's Proof-Of-Ownership Letter Is Clear and Fully Evidences Our Requisite Minimum Ownership

The Wells Fargo Letter provided in relevant part that: "As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 16, 2020, more than $2,000 of United Parcel Service Inc common stock."[10] Wells Fargo could not and would not make such an affirmation without a sound basis for doing so, and of course it had such a basis. When investment accounts change hands between brokerages, the holdings are accompanied by "cost basis" information, information that includes both the date of purchase and the size of the initial purchase and any subsequent alterations. This information transfers in the ordinary course of business, and it did so in this case. The whole financial sector relies on this ordinary-course information transfer to be correct and

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the-accounts-of-religious-organizations/ ; https://www.zerohedge.com/markets/bank-america-other-companies-share-customer-records-fbi-without-warrant-all-time-director ; https://www.newsweek.com/stop-troubling-trend-politically-motivated-debanking-opinion-1787639.

[10] Wells Fargo Letter (Dec. 27, 2023).

trustworthy, and the federal government, particularly in aid of its taxing power, similarly relies on it.[11] The Company has provided no evidence, nor even a credible suggestion, that this normal-course information transfer either did not happen in this instance or that anything happened to cast the slightest doubt on its effectiveness and veracity. And certainly, Wells Fargo would not have placed itself in danger of committing fraud by issuing its proof of ownership letters containing the relevant information if it had borne the slightest concern about the correctness of the cost-basis information it relied on, which had been received by them in the entirely expected manner in the ordinary course of business.

The Company persists in its increasingly meretricious position even in the face of an additional letter from UBS confirming, with regard to every single holding transferred from UBS to Wells Fargo, that the information that Wells Fargo now has, and relies on in its letters, is exactly the same as the information UBS maintained and then transferred to Wells Fargo.[12] This supplemental letter was in no way required under Rule 14a-8(b), as we have seen, but we procured it for the Company in order to foreclose even the faintest possibility that the Company could in honesty and good faith retain the slightest doubt about the correctness and completeness of the Wells Fargo proof-of-ownership letter. As the lacunae in its no-action letter reveal, we were successful in that attempt.

The Company argues that:

> If the Proponent's shares were held by more than one "record" holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.[13]

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[11] Cf. "The Cost Basis Reporting Service (CBRS) is an automated system that gives financial firms the ability to transfer customer cost basis information from one firm to another on any asset transfer." https://www.dtcc.com/clearing-services/equities-clearing-services/cbrs

[12] The file name for this letter, which was visible as part of the email sent to the Company on December 27, 2023, is "ACAT Cost Basis Confirmation Letter." The "Automated Customer Account Transfer Service (ACATS) is a system that automates and standardizes procedures for the transfer of assets in a customer account from one brokerage firm and/or bank to another." https://www.dtcc.com/clearing-services/equities-clearing-services/acats .

[13] UPS no-action request (Dec. 30, 2023). We note that this quote is taken from the Company's "Second Deficiency Notice" and that the Company's law firm here, Gibson, Dunn & Crutcher LLP, essentially repeated it as follows in an email to Proponent dated January 11, 2024, as part of a correspondence involving the same issue but on behalf of a different client.

> As stated [in our Second Deficiency Notice], Rule 14a-8(b) requires proof of ownership from the "record" holder of the proponent's shares, and "[i]f the Proponent's shares were held by more than one 'record' holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership must be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements."

In support of this proposition, the Company cites Staff Legal Bulletin 14F ("SLB 14F") as follows.[14]

> SLB 14F provides that proof of ownership letters may fail to satisfy Rule 14a-8(b)(1)'s requirement if they do not verify ownership "for the entire one-year period preceding and including the date the proposal [was] submitted." This may occur if the letter verifies ownership as of a date before the submission date (leaving a gap between the verification date and the submission date) or if the letter verifies ownership as of a date after the submission date and only covers a one-year period, "thus failing to verify the [stockholder's] beneficial ownership over the required full one-year period preceding the date of the proposal's submission." SLB 14F. SLB 14F further notes, "The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held."

The problem with the Company's foregoing reliance on SLB 14F is that Proponent's proof of ownership is consistent with all these requirements. Wells Fargo is "the DTC participant through which the securities are held" (emphasis added) and the Wells Fargo Letter expressly verifies ownership for the entire relevant period with no gap in coverage.

The Company also cites Staff Legal Bulletin 14 ("SLB 14") for the proposition that "a shareowner's monthly, quarterly or other periodic investment statements are insufficient to demonstrate continuous ownership of securities." But again, this proposition is irrelevant because Proponent is not relying on a periodic statement. Rather, Proponent's record holder has expressly verified that Proponent satisfied the relevant ownership requirements for the entire relevant coverage period.

The Company then proceeds to cite eleven no action decisions ostensibly as further support for its proposition that Proponent must provide documentation from every institution that served as record holder during the relevant holding period. The problem with these citations is that, even as described by the Company, not a single one of them stands for that proposition. Rather, they stand for the proposition that (1) a proponent may provide relevant documentation from multiple record holders to satisfy the proof of ownership requirement, or (2) that proof of ownership documentation *expressly setting forth an inadequate holding* period will be deemed insufficient.

In fact, the lead citation of the eleven not only fails to support the proposition for which it is employed, but provides precedent barring the Staff from conjuring from nothing ambiguities or wild conjectures about how impermanence of ownership could have been achieved despite clear record holder assertions of permanence over the relevant period.

The Company asserts that:

(Email on file with Proponent, emphasis added). This language at least suggests that the second quotation, stating that proof of ownership "must" be obtained from all relevant prior record holders, is part of Rule 14a-8(b). While Proponent knows that this language is not part of Rule 14a-8(b), but rather an interpretation of that rule desired by counsel and their clients, a less sophisticated shareholder could have easily been misled by this language.

[14] The Company argues that the guidance in SLB 14F "remains applicable even though Rule 14a-8 has since been amended to provide [new] tiered ownership thresholds."

> [A]s explained in both the First Deficiency Notice and the Second Deficiency Notice, each record holder must provide proof of ownership for the period in which they held the shares, as was done for example by the record holders in *The AES Corp.* (avail. Jan. 21, 2015) (providing one ownership letter from BNY Mellon verifying the proponent's ownership from October 20, 2013 through October 31, 2013 and a second letter from State Street verifying the proponent's ownership from November 1, 2013 through October 20, 2014).[15]

Here (again[16]) we see the Company by counsel striving mightily to create the impression that somewhere, somehow, the Staff had violated the clear and exact directive of Rule 14a-8(b) that a letter from the record holder be provided and had instead determined that letters from *prior* record holders must also – with arbitrary and capricious disregard of the rule – be provided. This time the Company attempts to convey the impression that *The AES Corp.* (avail Jan. 15, 2015), is that vehicle of Staff misapplication of Rule 14a-8(b). That impression, though, is absolutely false. Rather, in *The AES Corp.* the Staff held *against* the company and did not find that the documents that the proponent had provided were insufficient or even that they were all necessary. *It made no determination about minimum documentary requirements at all*, and certainly did not demonstrate that, as the Company claims, "each record holder must provide proof of ownership for the period in which they held the shares."

In fact, the one thing that *The AES Corp.* does stand for is that where there has been presented, as there has in this proceeding, "facially adequate" proof of ownership, the Staff will not condone exclusion on the basis of ludicrous conjectures such as that proponents had for no particular reason sold all of their assets one day and bought them the next – or presumably on the same day. In the instant proceeding, the Company has never even bothered (or perhaps dared) to indicate what specifically it claims to be the ambiguity in the perfectly clear letter from Wells Fargo; rather it just asserts that it is ambiguous … somehow. To be clear, there is no ambiguity in the Wells Fargo Letter because Wells Fargo expressly states Proponent satisfies the ownership requirements, and the reference to UBS merely acknowledges the ordinary course cost basis transfer.

Because the Company fails to identify what it finds ambiguous, it fails also to identify the mechanisms by which non-continuity might have been achieved even under the wildest of presumptions. But what *The AES Corp.* stands for, and all that it stands for, is that even if the Company *were* to articulate its fanciful cogitations about how non-continuity could possibly have been achieved, the Staff would rightly dismiss them as insufficient to undermine a demonstration of ownership that comports completely with the requirements established in Rule 14a-8(b).

Nowhere in its no-action request has Company cited a single Staff decision in which the Staff has violated its basic duty to follow Rule 14a-8(b) by requiring proof of ownership documents from more than the current record holder. Nor has Company's counsel done so while submitting this argument again and again on behalf of a whole series of clients (whose bills for this argument we hope are each very small indeed). No such citation has been possible because no such citation exists. *The Staff, so far as anyone has been able to discover, has never required that proponents must submit proof of ownership*

[15] UPS no-action request (Dec. 30, 2023) at 8.
[16] *See supra* note 11.

letters from former record holders – because the Staff cannot so require even if it wished to burden proponent with such unnecessary additional paperwork. Rather, Company's counsel simply keeps citing itself, again and again, for the proposition upon which its whole argument rests but for which no support exists, and which would constitute a direct violation of the plain language of Rule 14a-8(b) were the Staff to adopt it.

All of this suggests that the Company and its counsel understand full well when statements are and are not ambiguous or misleading. The statement made by our record holder in its proof-of-ownership letter is clear, fully satisfies the requirements of the Rule, and contains no ambiguity. The comparison to the remarkable flexibility of expression and implication demonstrated by the Company per counsel in this proceeding is illuminating.

Proponent here has satisfied the relevant proof-of-ownership burden via the Wells Fargo Letter, which expressly confirms the requisite holding for the requisite period. Nothing else ever has been required by the Staff, nor may it be.

The Staff has previously noted that some companies "apply an overly technical reading of proof of ownership letters as a means to exclude a proposal," but that the Staff "generally do[es] not find arguments along these lines to be persuasive."[17] Specifically, "companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements."[18] Here, the Company should have no honest doubt whatever about our holding the appropriate amount of stock throughout the appropriate period in light of (1) the foregoing guidance, (2) the routine nature of the transfers the Company claims to be perplexed by, and (3) Wells Fargo's clear conclusion that we have held "continuously since November 16, 2020, more than $2,000 of United Parcel Service Inc common stock."[19] Rather, the Company is simply asking the Staff to declare in contravention of the regulations and guidance governing this no-action process that we were bound by a never-before-articulated requirement to provide yet another piece of paper that it can add to the already complete, regular and inarguably trustworthy demonstration of proof of ownership.

In short, the Wells Fargo Letter itself fully satisfies our obligation under Rule 14a-8(b), and having fully satisfied our duty we then in the fullness of politesse provided another letter, this one indeed from UBS, confirming that absolutely no possibility of doubt about the propriety of our ownership as averred by Wells Fargo remained.

The Company nevertheless feigned a remnant of doubt because the Wells Fargo Letter "contained an ambiguous representation as to the Proponent's continuous ownership." This is simply false. Again, there is nothing ambiguous about Wells Fargo's representation that we hold and have held "continuously since November 16, 2020, more than $2,000 of United Parcel Service Inc common stock." While the Company claims to have been thrown into confusion by the fact that our account with Wells Fargo was established within the past year, it is again difficult to take this claim seriously in light of the ubiquity of stock transfers – particularly given the sophistication of the Company and its counsel. Beyond that, the supplementary UBS letter to which the Company had no regulatory entitlement, as we

[17] SLB 14L.
[18] Id.
[19] Wells Fargo Letter (Dec. 27, 2023).

have seen, only further undermines any claims to honest doubt. In addition to the confirmation that Wells Fargo's information was the same as UBS's, it essentially restated what is obvious from the Wells Fargo Letter: That we transferred stock to Wells Fargo and that Wells Fargo obtained the requisite cost basis information in connection with that transfer to affirm our relevant ownership, as is routine.

The Company's argument isn't merely empty of material import or good faith; it is fundamentally premised on suggesting that Wells Fargo and UBS are willing to risk their reputations and potentially additional grave consequences to help us to misstate our ownership, or at very least with reckless disregard about the veracity of their assurances about the size and nature of our holdings with them – which would be a particularly bad look for *two banks*.

In addition to everything else, were the SEC to conclude that the Wells Fargo Letter here is insufficient proof of ownership, it would be undermining market efficiency, which includes myriad such transfers on a daily basis, thus violating the core mission of the SEC.

Conclusion

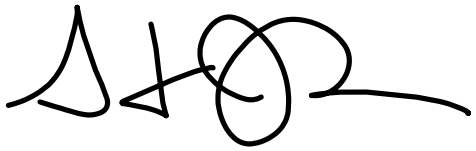
The Wells Fargo Letter states clearly that: "As of December 27, 2023, the National Center for Public Policy Research holds, and has held continuously since November 16, 2020, more than $2,000 of United Parcel Service Inc common stock." This satisfies our proof of ownership obligations. The Company's argument that proponents must provide letters from every record holder covering the relevant holding period is unsupported by the relevant regulatory text and furthermore is so unworkable as to undermine market efficiency in way contrary to the purposes of the Securities Exchange Act.

The Company has failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [redacted] and at [redacted].

Sincerely,

Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Ryan Swift ([redacted])

APPENDIX II

I. Response to the Company's Claims: The Company Is Requesting Relief the Staff Lacks Statutory Authority to Issue

The Staff lacks statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from "solicit[ing] any proxy" "in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors."[20] While this authority might be read "broadly," "it is not seriously disputed that Congress's central concern [in enacting § 14(a)] was with disclosure."[21] The purpose of Section 14(a) was to ensure that investors had "adequate knowledge" about the "financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders' meetings."[22]

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the "firmly established" state-law jurisdiction over corporate governance.[23] Recognizing that state law provides the "confining principle" to Section 14(a)'s otherwise "vague 'public interest' standard," the D.C. Circuit has held that "the Exchange Act cannot be understood to include regulation of" "the substantive allocation" of corporate governance that is "traditionally left to the states."[24] Under Section 14(a), then, the SEC may compel the disclosure in a company's proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation's annual meeting if the proposal is a proper subject for action by the corporation's stockholders.[25] A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders' power to adopt.[26]

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

[20] 15 U.S.C. § 78n(a)(1).
[21] Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).
[22] S. Rep. No. 792 at 12 (1934).
[23] Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).
[24] Id.
[25] See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).
[26] Id. at 232.

GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Tel 202.955.8500
gibsondunn.com

Ronald O. Mueller
Direct: +1 202.955.8671
Fax: +1 202.530.9569
RMueller@gibsondunn.com

February 14, 2024

VIA ONLINE SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: General Electric Company
Supplemental Letter Regarding Shareholder Proposal of the National Center for Public Policy Research
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

On January 5, 2024, we submitted a no-action request (the "No-Action Request") to the staff of the Division of Corporation Finance (the "Staff") on behalf of our client, General Electric Company (the "Company"), relating to the shareholder proposal (the "Proposal") and statement in support thereof received from the National Center for Public Policy Research (the "Proponent") for inclusion in the Company's proxy statement and form of proxy for its 2024 Annual Meeting of Shareholders (collectively, the "2024 Proxy Materials"). The No-Action Request sets forth the basis for our view that the Proposal properly may be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information.

On February 2, 2024, the Proponent submitted a response to the No-Action Request (the "Response Letter"). In an appendix to the Response Letter, the Proponent argues (1) that a proponent is only required to provide proof of ownership from a single record holder of the proponent's shares to verify continuous proof of ownership for the relevant time period preceding and including the proposal's submission; and (2) that the Staff should rely on data from the cost-basis reporting system that is required under Internal Revenue Service ("IRS") rules to verify a proponent's proof of continuous ownership when shares were transferred between record holders during the relevant holding period preceding and including the date of the proposal's submission. In addition, in a separate appendix to the Response Letter, the Proponent asserts that the Staff lacks authority to address this matter.

1. *The Proponent's Narrow Reading Of The Record Holder Requirement Is Inconsistent With Rule 14a-8(b)*

The Response Letter states that Rule 14a-8(b) requires proponents to submit a statement from "the 'record' holder of [our] securities" confirming the relevant value of the proponent's ownership over the relevant period and that the rule does not "add[] an additional obligation on proponents that they also provide redundant proof of ownership letters from former record holders of the stock" (emphasis omitted). This narrow reading of record holder under Rule 14a-8(b) defies logic and long-established precedent.

First, although Rule 14a-8(b)(2)(ii)(A) refers to "the 'record' holder," it is a well-established canon of statutory and regulatory construction that singular references include the plural. This is confirmed in Rule 103(c)(1) of the Rules of Practice of the Securities and Exchange Commission (the "Commission"), which states, "any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate." It is clear that in the context of Rule 14a-8(b)'s reference to "the 'record' holder," it is appropriate to read the reference to refer to more than one record holder when more than one record holder held custody of a proponent's shares over the applicable time period. For example, the Proponent's argument that the Rule's use of the phrase "the 'record' holder" refers to only a single record holder would prevent a shareholder from being able to aggregate shares that it holds in two different brokers' accounts for purposes of demonstrating ownership of the requisite amount of shares.[1] The Proponent's assertion that this reading requires "redundant" proof of ownership presupposes that a broker can provide satisfactory proof of ownership as to shares for which it was not the record holder, which (as addressed below) is not the case under the standards required by Rule 14a-8(b).

Second, contrary to the claim in the Response Letter, the Staff has long interpreted Rule 14a-8(b) to require proof of ownership from more than one record holder when a proponent purports to have satisfied the ownership requirements with shares that were held during the requisite time period by two different record holders. As shown through the precedent cited in the No-Action Request, many proponents have understood and complied with this requirement. The Staff also has previously concurred that a broker's statement of ownership

[1] Similarly, an overly restrictive reading of "the 'record' holder" (emphasis added) to refer to a single record holder would mean that a shareholder who had transferred its shares during the applicable holding period could never satisfy the proof of ownership requirement. The Proponent's assertion that in such a situation a record holder should be able to rely on a relatively recent reporting obligation arising under tax rules to satisfy Rule 14a-8(b)'s long-standing proof of ownership requirements strains the rule's language too far and is inconsistent with standard canons of statutory and regulatory interpretation.

that relied on cost-basis information from a prior record holder is not sufficient to satisfy Rule 14a-8(b)(2)(ii)(A). For example, in *Johnson & Johnson* (avail. Feb. 8, 2019), the Staff concurred with the exclusion of a co-filer to a proposal, where the co-filer attempted to demonstrate its requisite continuous stock ownership by providing a broker letter that relied on cost-basis information from a transferring custodian. Specifically, the co-filer responded to a deficiency letter by providing a letter from Charles Schwab that showed Charles Schwab had held the co-filer's shares for only a four-month period prior to the proposal's submission date, but provided detailed cost-basis data from the prior record holder, Morgan Stanley, showing the acquisition dates of the separate tranches of shares. In its no-action request, Johnson & Johnson argued that the co-filer had not provided proof verifying that the co-filer had held the shares continuously for at least one year preceding and including the proposal's submission date. The Staff concurred with the exclusion of the co-filer's proposal, noting that the co-filer "failed to supply, within 14 days of receipt of the [c]ompany's request, documentary support sufficiently evidencing that it satisfied the minimum ownership requirement for the one-year period required by rule 14a-8(b)."

Here, just as in *Johnson & Johnson,* Wells Fargo was not "the" record holder of the Proponent's shares for the entirety of any of the requisite time periods. The Proponent's proof of ownership from Wells Fargo purporting to verify continuous ownership is therefore insufficient to demonstrate that there was no interruption in the proponent's chain of ownership for any of the requisite time periods. Instead, when a proponent's shares were transferred during the applicable holding period, a proponent must submit letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership to satisfy Rule 14a-8(b)'s requirements. The Company's deficiency letters to the Proponent clearly spelled out this requirement and stated what the Proponent needed to do to cure the deficiency. Because the Proponent did not cure the deficiency, the Proposal can properly be excluded from the 2024 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

2. *Cost-Basis Data Does Not Provide Confirmation Of Ownership Equivalent To Documentation From The Applicable Record Holder*

As further described in the No-Action Request, the Proponent provided to the Company three letters from financial institutions (a letter from Wells Fargo Advisors, dated December 8, 2023 (the "First Wells Fargo Letter"); a letter from Wells Fargo Advisors, dated December 27, 2023 (the "Second Wells Fargo Letter"); and a letter from UBS Financial Services Inc., dated December 4, 2023 (the "UBS Letter," and collectively the "Financial Institution Letters")) purporting to verify the Proponent's continuous ownership of Company shares for the three-year holding period preceding and including November 22, 2023 (the

"Submission Date"). Both the First Wells Fargo Letter and the Second Wells Fargo letter purport to verify that:

> the [Proponent] holds, and has held continuously since November 20, 2020, more than $2,000 of [Company] common stock. *This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred*. (emphasis added)

In the Response Letter, the Proponent asserts that:

> Wells Fargo could not and would not make such an affirmation without a sound basis for doing so . . . . When investment accounts change hands between brokerages, the holdings are accompanied by "cost basis" information, information that includes both the date of purchase and the size of the initial purchase and any subsequent alterations. This information transfers in the ordinary course of business, and it did so in this case. The whole financial sector relies on this ordinary-course information transfer to be correct and trustworthy, and the federal government, particularly in aid of its taxing power, similarly relies on it . . . . Wells Fargo would not have placed itself in danger of committing fraud by issuing its proof of ownership letters containing the relevant information if it had borne the slightest concern about the correctness of the cost-basis information it relied on, which had been received by them in the entirely expected manner in the ordinary course of business.

Under a law adopted in 2008, brokerage firms must report to the IRS and to their customers certain cost-basis information when the customer sells the customer's securities in a broker's transaction. The cost-basis information required to be reported includes the date that the securities were deemed to have been initially acquired by the customer for tax purposes.[2] To facilitate compliance with the cost-basis reporting rules, beginning on January 1, 2011, brokerage firms that transfer shares to a different brokerage firm on behalf of a customer are required to provide a "transfer statement" to the transferee which sets forth certain information, including the date that the shares were deemed to have been initially acquired by the customer for tax purposes.[3] It is this information that the Proponent asserts that it and

[2] *See* IRS Form 1099-B, *available at* www.irs.gov/pub/irs-pdf/f1099b.pdf.

[3] *See* Treasury Regulation § 1.6045A-1.

Wells Fargo should be entitled to rely on for purposes of satisfying Rule 14a-8(b)'s proof of ownership requirements.

However, the Proponent mischaracterizes the nature of this information and Wells Fargo's liability in the event that the cost-basis data it supplies the IRS with respect to a customer is incorrect. Brokerage firms do not assume full responsibility for, and are not in "danger of committing fraud" over, the accuracy of cost-basis information reported in Forms 1099-B when they report information obtained from another brokerage firm pursuant to a transfer statement. Specifically, Treasury Regulation § 1.6045-1(d)(2)(iv)(A) affords brokerage firms a defense from penalties should cost-basis data be reported incorrectly based on information received from a transferring broker, by providing that a brokerage firm that relies on another firm's transfer statement is deemed to have reasonable cause in the event of any reporting error: "A failure to report correct information that arises solely from reliance on information furnished on a transfer statement . . . is deemed to be due to reasonable cause for purposes of penalties under sections 6721 and 6722." Moreover, the transferring brokerage firm that provides cost-basis information on a transfer statement is allowed to take into account information provided by the individual account holder when providing information to the transferee. Treasury Regulation § 1.6045A-1(b)(11)(ii) states that, "[f]or purposes of penalties under section 6722, a transferor that takes into account information received from a customer . . . is deemed to have relied upon this information in good faith if the transferor neither knows or has reason to know that the information is incorrect." It also is important to note that the standards applicable to cost-basis reporting for tax purposes are not designed to address the record ownership requirements of Rule 14a-8(b), and, for example, allow for cost-basis reporting when shares are transferred from one person to another by gift or inheritance, when the security was subject to a sale and purchase within a 30-day period and is treated as a "wash sale," and when shares are transferred between accounts held in different names.[4]

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[4] For example, the instructions to Form 1099-B reflect the fact that cost-basis reporting may cover situations in which shares are being transferred from one account name to another, stating:

> If the names of the customer(s) for the transferring and receiving accounts are not the same, the transfer statement must also include the name of the customer(s) for the account to which the security is transferred. However, if the transfer is to or from an account for which a broker, custodian, or other person subject to the transfer reporting rules is the customer, the transfer statement must treat the beneficial owner or, if applicable, an agent substituted by an undisclosed beneficial owner, as the customer for both accounts, and the broker receiving the transfer statement should treat the security as

In addition, although brokers provide copies of Form 1099-B to the IRS, the shareholder (not the brokerage firm) remains responsible for reporting accurate information to the IRS on its holding period and cost basis. For example, in its communication with customers regarding Form 1099-B reporting, Wells Fargo Advisors states, "It is your responsibility to determine and report the applicable gain or loss by completing IRS Form 8949 along with Schedule D of your IRS Form 1040. Securities are identified as 'covered' or 'noncovered' or 'unknown' on the Form 1099-B to assist your filing."[5] Similarly, in a guide for investors, FINRA advises shareholders that they, rather than brokerage firms, are responsible for verifying cost-basis information to the IRS:

> You—the taxpayer—are responsible for reporting your cost basis information accurately to the IRS. You do this in most cases by filling out Form 8949.
>
> . . .
>
> Investors should receive a copy of any 1099-B or substitute statement from their brokerage firm by February 15. Review this information as soon as you get it. Check that the amount of cost basis your broker reports to the IRS matches your own records—and if the amounts differ, contact the broker immediately to discuss any differences you find.[6]

In short, the cost-basis information that the Proponent seeks to rely on was not designed to demonstrate satisfaction of the ownership standard required under Rule 14a-8(b), and it is not a substitute that provides the level of assurance required by the record holder requirement of Rule 14a-8(b).

In Staff Legal Bulletin 14F (Oct. 18, 2011) ("SLB 14F"), the Staff stated that a proof of ownership provided by an "introducing broker" would not satisfy Rule 14a-8(b)'s

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> held for the beneficial owner or the beneficial owner's agent regardless of the customer listed for the broker's account.

Instructions to Form 1099-B, at p. 6, *available at* www.irs.gov/pub/irs-pdf/i1099b.pdf. Thus, a transfer statement would not necessarily reflect a new holding period for shares subject to a transfer even in the context of certain transfers that effect a change in beneficial ownership.

[5] Wells Fargo Advisors, *Understanding your 2023 1099 statement*, at p. 3, *available at* www.wellsfargoadvisors.com/pdf/how-to-read.pdf.

[6] Cost Basis Basics—Here's What You Need to Know, *available at* https://www.finra.org/investors/insights/cost-basis-and-your-taxes.

requirements for providing proof of ownership from a "record" holder, even though an introducing broker "engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders," since the introducing broker has to contract with another firm, known as a "clearing broker," to hold custody of the client's securities.[7] Notably, even though the introducing broker is regulated by the Commission and has a contractual relationship with the clearing broker, the Staff determined that information an introducing broker provides does not satisfy the requirement to provide information from the "record" holder and therefore that an introducing broker could not on its own satisfy Rule 14a-8(b)(2)(ii)(A)'s proof of ownership requirements. Elsewhere in SLB 14F, the Staff acknowledged "that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals," but noted that its "administration of Rule 14a-8(b) is constrained by the terms of the rule."[8] Here, Wells Fargo's relationship with UBS is even more attenuated than the relationship between an introducing and clearing broker and, as discussed above, both UBS and Wells Fargo have only limited responsibility for the accuracy of the information supplied through the cost-basis reporting system cited in the Response Letter. The Financial Institution Letters demonstrate that Wells Fargo has not been the record holder of the Proponent's shares for any of the requisite periods required under Rule 14a-8, and the Proponent has not shown that Wells Fargo has a relationship with UBS that entitles Wells Fargo to confirm record ownership for any of the requisite periods. The cost-basis reporting rules are an entirely different regime and were not designed for, and should not be relied upon for, establishing record ownership for purposes of Rule 14a-8.

Just as with the proof of ownership letters provided in *Johnson & Johnson,* the Financial Institution Letters are only sufficient to show that the Proponent's current broker, Wells Fargo, has been the record holder of the Proponent's shares for a brief period, specifically between October 2023 and the Submission Date. Accordingly, the Financial Institution Letters are insufficient to cure the Proponent's ownership deficiency because they do not verify that, as of the Submission Date, the Proponent had satisfied any of the continuous ownership requirements of Rule 14a 8(b)(1) for any of the full time periods set forth in the rule (specifically, the three-year holding period as the Financial Institution Letters purport to verify holdings of "more than $2,000" of Company shares).

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[7] SLB 14F, at part B.3.

[8] *Id.* at part C.

3. The Proposal Is Subject to Rule 14a-8

The Proponent also asserts that the Proposal is proper under state law, and accordingly that the Staff does not have authority to provide no-action relief concurring with exclusion of the Proposal pursuant to Rule 14a-8. While the Proponent notes that state law enables a shareholder proposal to be presented for consideration at a company's annual meeting if the proposal is a proper subject for action by the company's shareholders, that has no bearing on whether a shareholder may require a company to include a shareholder proposal in its proxy statement and on its proxy card, which is provided for only pursuant to Rule 14a-8. Setting aside the issue of whether the Proposal is a proper subject matter for consideration under state law, the Proponent's cover letter submitting the Proposal to the Company clearly stated, "The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations."[9] Accordingly, the Proponent's assertion that the Proposal is not subject to Rule 14a-8 is inconsistent with the Proponent's statement when it submitted the Proposal and, because the Proponent has not satisfied the requirements of Rule 14a-8, the Proponent is not entitled to include the Proposal in the 2024 Proxy Materials.

* * *

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 2024 Proxy Materials.

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 Kira Schwartz, the Company's Executive Counsel, Corporate, Securities and Finance, at (617) 306-3079.

Sincerely,

Ronald O. Mueller

[9] The Proponent did not satisfy the requirements under the Company's bylaws to present a non-Rule 14a-8 proposal at the Company's annual meeting.

cc: Brandon Smith, Chief Corporate, Securities & Finance Counsel, General Electric Company
Kira Schwartz, Executive Counsel, Corporate, Securities & Finance, General Electric Company
Scott Shepard, National Center for Public Policy Research
Sarah Rehberg, National Center for Public Policy Research

February 27, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request for Shareholder Proposal by the National Center for Public Policy Research ("NCPPR" or "Proponent")

Ladies and Gentlemen:

This correspondence is in response to the following no-action request supplemental letters, the substance of which is essentially identical to the best knowledge of Proponent:

- letter of Ronald O. Mueller on behalf of General Electric Company dated February 14, 2024
- letter of Elizabeth A. Ising on behalf of United Parcel Service, Inc. dated February 14, 2024
- letter of Elizabeth A. Ising on behalf of PepsiCo, Inc. dated February 14, 2024
- letter of Lori Zyskowski on behalf of The Kraft Heinz Company dated February 14, 2024
- letter of Ronald O. Mueller on behalf of Intel Corporation dated February 20, 2024
- letter of Elizabeth A. Ising on behalf of Chevron Corporation dated February 26, 2024

I. Background

1. Rule 14a-8(b)(2)(A) provides that proponents may prove required share ownership by submitting "to the company a written statement from the 'record' holder … verifying that … [proponent] continuously held at least $2,000, $15,000, or $25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively." (Emphasis added.)

2. Proponent satisfied the foregoing requirement via a letter from Wells Fargo, the record of holder of Proponent's shares, which clearly verified that "the [Proponent] holds, and has held continuously since November 20, 2020,[1] more than $2,000 of [Company] common stock."

3. Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L") provides that:

[1] The date referenced in each of the six relevant letters differs, but that difference is immaterial to the resolution of the issue before the Staff. The specific letters are all available to the Staff as attachments to the original NAR letters.

> Some companies apply an overly technical reading of proof of ownership letters as a means to exclude a proposal. We generally do not find arguments along these lines to be persuasive…. Accordingly, companies should not seek to exclude a shareholder proposal based on drafting variances in the proof of ownership letter if the language used in such letter is clear and sufficiently evidences the requisite minimum ownership requirements.

4. Despite the foregoing, the Company[2] claims that "when a proponent's shares were transferred during the applicable holding period, a proponent must submit letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership to satisfy Rule 14a-8(b)'s requirements."[3]

5. As previously demonstrated in Proponent's Response Letter, and as will be further demonstrated below, there is no basis for such a rule in the relevant precedent, nor is there any need for the Staff to apply such a rule for the first time here. Among other things, the Company's desired rule would be utterly unworkable whenever a proponent's shares were transferred due to a breakdown of the proponent's relationship with the prior record holder.

II. Responses to the Company's Supplemental Letter

1. The Company argues that applying the rule as it is written (i.e., only requiring verification from the record holder) "would prevent a shareholder from being able to aggregate shares that it holds in two different brokers' accounts." This confuses what a proponent must do with what a proponent may do. Under the rule, proponents are only required to submit verification from the record holder. However, they may provide whatever additional proof they wish – including verifications from multiple record holders in order to aggregate share ownership. Accordingly, there is no conflict between only requiring verification from the record holder and Rule 103(c)(1) of the Rules of Practice, which permits any term in the singular to include the plural when "appropriate."

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[2] Throughout, "the Company" refers to all the companies listed at the beginning of this letter.

[3] While this statement clearly reflects the rule the Company would like the SEC to adopt, Proponent has been provided with no citation whatsoever that sets forth this proposed rule as being currently in effect. We leave it to the Staff to decide the extent to which this statement thus constitutes a knowing misrepresentation by Gibson, Dunn & Crutcher LLP, the Company's law firm, particularly when viewed in the context in which it was previously made to Proponent. See Gibson, Dunn & Crutcher LLP email to Proponent dated January 11, 2024.

> As stated [in our Second Deficiency Notice], Rule 14a-8(b) requires proof of ownership from the "record" holder of the proponent's shares, and "[i]f the Proponent's shares were held by more than one 'record' holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership must be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements."

Id. (emphasis added).

2. The Company cites *Johnson & Johnson* (avail. Feb. 8, 2019) for the proposition that "when a proponent's shares were transferred during the applicable holding period, a proponent must submit letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership to satisfy Rule 14a-8(b)'s requirements." However, the relevant claimed deficiency in *Johnson & Johnson* (avail. Feb. 8, 2019) supports no such assertion, given that the company therein only ultimately claimed as deficient "the failure to include a statement from the record holder of the Trust's shares confirming that the Trust beneficially owned the requisite number of Johnson & Johnson's shares continuously for at least the one-year period preceding, and including, November 13, 2018, the date the Proposal was submitted." Obviously, Proponent's record holder provided precisely such a statement.

3. The Company provides no explanation for why Wells Fargo would risk the myriad negative consequences – legal and reputational – that would accompany any attempt by it to misrepresent our share ownership. That is because the only reasonable presumption that can be applied is that Wells Fargo would only verify our share ownership if it had actually verified that ownership sufficiently to make the affirmation it made in its letter. Yet the Company essentially tries to argue that Wells Fargo can cavalierly misrepresent our share ownership because it is protected from certain liability for misstatements under Treasury Regulations in connection with certain related data it might provide the IRS. We trust the Staff will dismiss this argument as facially absurd. If anything, the cited Treasury Regulations support the need for some reasonable level of trust between market participants in order for markets to function effectively. This is perhaps related to the admonition in SLB 14L that companies should not "apply an overly technical reading of proof of ownership letters as a means to exclude a proposal." Nor does the Staff need to earn a PhD in the mechanics of cost-basis data transfers. Absent proof of actual fraud, the Staff can rely on verifications from the record holder that satisfy the text of the rule. In fact, it is worth asking what the limiting principle would be were the Staff to accept the Company's claim that "the cost-basis information that the Proponent seeks to rely on was not designed to demonstrate satisfaction of the ownership standard required under Rule 14a-8(b), and it is not a substitute that provides the level of assurance required by the record holder requirement of Rule 14a-8(b)." On what basis other than cost basis is the record holder to verify ownership? Accepting the Company's argument on this point would essentially gut the current proof-of-ownership process.

4. The Company cites Staff Legal Bulletin 14F (Oct. 18, 2011) ("SLB 14F") for the proposition that "a proof of ownership provided by an 'introducing broker' would not satisfy Rule 14a-8(b)'s requirements for providing proof of ownership from a 'record' holder." With all due respect, so what? Wells Fargo is the record holder, not an introducing broker.

5. The Company's argument challenging our views on the limits of SEC authority in this matter miss the point of our position. We recognize the authority of the SEC to compel disclosure by *corporations,* the entities that offer *securities* on *exchanges*. However, we believe the SEC lacks a co-extensive power to silence shareholders, for reasons beginning with the complete failure of Congress to grant to this agency, much less to its staff without any reliable method of review, any oversight of shareholder proposals or other communications between shareholder-owners and their executive management teams.

That point of law aside, there is nothing inconsistent with our compliance with the Rule 14a-8 process in order to facilitate inclusion of our Proposal in the Company's proxy statement while at the same time challenging the Staff's authority to effectively bless the Company's attempt to exclude our Proposal.

Surely the Company's counsel does not lay before the Company or other of its clients a stark dichotomy: (1) either submit meekly to what it considers illegal or *ultra vires* behaviors by government agencies that affect the Company or clients adversely; or (2) challenge the government actions thought to be faulty while in the meanwhile refusing to have anything to do with those potentially faulty processes, even if such non-participation could result in additional adverse consequences for the Company or other clients. That would be absurd, and even fall to the level of actionable incompetence in representation.

Of course the wise and prudent thing to do when faced with an instance – or long pattern and practice, as here – of legally problematic behavior on the part of a government agency is for the injured party to proceed in the manner that minimizes the disadvantages arising from the agency's problematic behavior as much as possible, without creating *new* disadvantages, while simultaneously challenging the assertedly inappropriate actions and practices as permitted by law. As shareholder proponents we are in practice stuck with the no-action review process as it has developed and as it has been undertaken by the Staff, and we continue to be until the merits of our claims are heard. It would avail us nothing and harm us still further to respond to biased and arbitrary practices in many instances by the Staff – behavior that results in our proposals sometimes being inappropriately omitted – by refusing to submit any shareholder proposals at all.

As foolish would be refusing to oppose ill-considered and baseless no-action requests such as the tedious string that counsel has submitted on behalf of a stable of corporate clients this season, all without having identified any coherent locus for honest doubt about our ownership or any possible sanction in statute, regulation, staff precedent, broader practice, common sense or basic good faith and fair dealing for his desired determination.[4] Counsel's plea that the Staff spin out of nothing a brand-new obligation to provide proof-of-ownership letter***s*** in circumstances in which there is no identifiable grounds for any honest doubt about the sufficiency of the always-heretofore-sufficient and regulation-established single letter is so lacking in grounding or persuasive power that we doubt that counsel would ever have tried it against a shareholder proponents animated by the policy preferences to which the Staff has shown inappropriate partiality, and the only feeble hope that drew the argument forth against us was that if the arbiter is biased against an adversary, even bad arguments might end up prevailing.

Even biased adjudicators deciding within an inappropriately arbitrary, capricious, under-explained and not-at-all-effectively reviewed process face boundaries on the scope of their opportunities to deploy that bias. Those boundaries are narrowed by effective demonstration that some arguments are so preposterous; so fraught with untenable later precedential and practical implications; so at odds with (whatever we might think of them) the long-standing rules of the no-action process, common sense and general fair play that adjudicator acceptance of such an argument becomes practically impossible – or at least would establish beyond cavil the lawlessness of the review and adjudication process itself. This is the very situation in which we find ourselves.

Counsel now asserts that our dismantling of his spurious, wholly manufactured argument for exclusion of our Proposals (many of them, indeed) should be set aside because we didn't, in confronting government action we believe to be illegal in ways that work to our detriment, also withdraw from that

[4] While the various related letters we have received are signed by different attorneys, we understand the primary driver of this argument to be Ronald O. Mueller, Partner, Gibson, Dunn & Crutcher LLP.

flawed process while challenging it, thereby leaving the process in place while magnifying its improper harms to us and our efforts. This, then is the ludicrous coda of counsel's many-fronted effort to tempt the Staff, in its disfavor of the motivations and goals of our shareholder-proponent efforts, to latch onto the claptrap he offered as grounds for omitting a significant share of our proposals despite all of the various ramification of that acceptance – ramifications that we have identified consistently, repeatedly and without any meaningful response from Company counsel all season long. In aid of saving some corporate executives the momentary discomfort of being recalled to their fiduciary duties to run their companies by objective analysis rather than by personal policy preference,

Company counsel invited the Staff to accept an argument that would contradict regulatory text, overturn long practice, have the unquestionable effect of rendering all heretofore-accepted proofs of ownership insufficient by undermining the reliability of proof-of-ownership letters themselves, all of them – and all of this without his having identified the smallest ground for reasonable doubt of those one, single letters per company per year, in this instance and more generally. Were the Staff to accept this argument despite all of these individually sufficient disqualifiers, it would provide incontrovertible proof to courts now sitting that the no-action process is at very least so arbitrary and capricious in design and application, and so bereft of salutary and effective review and correction mechanisms that it must be rebuilt from the slab – unless opting instead for root-and-branch demolition.

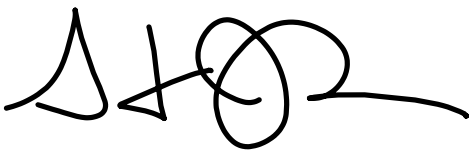
III. Conclusion

The Companies have clearly failed to meet their Rule 14a-8(g) burden on the issue of excluding our Proposal. Therefore, based upon the analysis set forth above and in our prior replies, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [redacted] and at [redacted].

Sincerely,

Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Gibson Dunn generic shareholder proposal email address ([redacted])