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August 14, 2009

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

Ladies and Gentlemen:

*Re: File No. S7-10-09 Release No. 34-60089
Facilitating Shareholder Director Nominations*

This letter is submitted on behalf of Norfolk Southern Corporation (“Norfolk Southern”) in response to the Commission’s request for comments on the above-identified Release issued June 10, 2009. Norfolk Southern is a New York Stock Exchange (“NYSE”) listed company and Virginia Corporation and one of the largest transportation service providers in the country. We employ approximately 30,000 people in 22 states and the District of Columbia and had approximately \$10.66 billion in revenues in 2008. Norfolk Southern Corporation common stock is held by over 36,000 shareholders.

The Securities and Exchange Commission’s (“Commission’s”) Release describes rules proposed to provide shareholders with the right to include their nominees for an issuer’s board of directors on the issuer’s proxy statement and proxy card. The events and financial conditions of the past year certainly suggest to many the need for greater board accountability, but it is not clear that the proposed proxy access rules will result in a governance climate that would have prevented the failure of investor confidence over recent months. While governance changes to address such issues as risk management seem to directly answer recent problems, the proposed shareholder access rule is less directly related to the recent governance crisis. Instead we fear the proposals, if adopted, will result in a politicized election process, increased influence of proxy advisory services (rather than the shareholders the rule is designed to empower) and the election of special interest directors who do not serve the best interests of shareholders.

As the Commission’s statement in the release accurately notes, the “significant changes” that are proposed require an “incremental approach as a first step” with the opportunity to reassess and amend at a later time. Norfolk Southern respectfully submits that incremental changes are already taking place in the absence of federal regulation through governance experimentation on the state and corporate level. By waiting to implement rules that will limit creative applications

of narrowly tailored solutions to particularized needs, the Commission will retain the ability to analyze the effects of various strategies and apply those that are most effective. This is an appealing alternative to the guess work that is necessarily involved when anticipating the effects of new and untried rules.

For many years the differences in state corporate laws have been seen by companies and investors as a strength - not a weakness - allowing states to respond more directly to their constituent companies and shareholders. The differences in state corporate laws have allowed for variation and experimentation in finding the appropriate legislative solution for emerging or newly identified problems. This experimentation is aptly illustrated in the area of proxy access. Delaware has recently adopted a "private ordering" approach, allowing companies to decide whether to adopt a proxy access bylaw, while North Dakota has adopted a corporate code for public companies which includes mandatory proxy access for shareholder director nominees. State legislatures have clearly shown a willingness and intent to create solutions to address the perceived inadequacy of current shareholder nomination rights. These recent innovations are a clear indication that states have developed, and will continue to develop, novel and appropriate responses to issues such as shareholder access to the company's proxy statement.

In addition, Norfolk Southern, like many other companies, has voluntarily adopted a number of governance improvements. One recent improvement is the inclusion of a majority voting policy for uncontested director elections. Policies addressing this issue nationwide serve as a reliable historical example of responsible corporate activity in the absence of sweeping federal regulation. Furthermore, Norfolk Southern's changes were directly born from the concerns of our shareholder constituents as well as from a desire to keep pace with evolving best practices of peer companies. The adoption of inflexible rules would effectively prevent this type of corporate response to shareholder ideas.

If the Commission decides to adopt the proposal at this time, Norfolk Southern believes there are several changes that would improve the operation of the rules. Specifically, the threshold for nominating shareholders should be raised, the "first in time" rule should be replaced with an alternative method, and the nominee independence requirements should be enhanced. These changes would provide greater protection for the interests of shareholders and companies.

First, the threshold for nominating shareholders should be raised and aggregation should not be permitted. As proposed, Rule 14a-11 would permit shareholders, or groups of shareholders, owning only 1% of a company's outstanding voting stock to place their director nominees on a company's proxy statement. For Norfolk Southern, at least eleven shareholders would meet this threshold alone, and countless others may aggregate their holdings to reach this threshold.

Thresholds for shareholder proposals and proxy access are generally intended to ensure that the interests of the shareholder permitted to use the process are closely aligned with the interests of shareholders as a whole. While a 3% or 5% threshold may achieve this goal, we share the concern of many other commentators that a 1% threshold would allow many special interest shareholders, who may or may not share the interests of the majority of shareholders, to use the company's resources to promote their agendas. This problem is greatly exacerbated by the

ability of even very small shareholders to aggregate to meet the 1% threshold. If the intent is to allow the process to be used by shareholders whose interests are likely to be aligned with shareholders as a whole, it is unlikely that the 1% threshold coupled with the ability to aggregate share ownership will achieve this intent.

Second, the “first in time” rule should be replaced with an alternative method of priority ordering based upon the percentage of voting securities the nominating shareholders own. Whatever the applicable share ownership threshold, it is possible that more than one shareholder or shareholder group will submit nominees under the shareholder access provisions of Rule 14a-11 for any given proxy season. As proposed, the rule would require an issuer to include the earliest submitted shareholder nominees in the company’s proxy statement and subsequently submitted shareholder nominees would be excluded. This result would hold even if the earlier nominees were submitted by a shareholder group that just met the 1% threshold and the later nominees were submitted by a 10% shareholder.

In cases where more than one shareholder or shareholder group submit nominees for inclusion in a company’s proxy statement, we believe the shareholder with the largest ownership interest should be given preference. As a general principle, the larger the shareholder’s ownership, the more likely the individual shareholder’s interests are aligned with those of the corporation and shareholders as a whole, and the less likely the shareholder is motivated by special interests unrelated to the maximization of shareholder wealth. Requiring a company to include the nominees of the shareholder or group owning the largest amount of voting securities would improve the operation of the rule and give a result more closely aligned with the interests of the majority of shareholders.

Third, the nominee independence requirements should be enhanced. Norfolk Southern is committed to good corporate governance, and the Board’s Governance and Nominating Committee strives to nominate directors who are independent from the company. Currently, the Board has determined that all outside directors (10 of our 11 directors) are independent under our categorical independence standards. In addition, shareholders have the ability to nominate potential candidates for election as directors, and the Governance and Nominating Committee considers potential candidates, whether recommended by a shareholder, director, member of management or consultant retained for that purpose. The qualifications that the Governance and Nominating Committee considers in evaluating candidates and the information that should be included for a director candidate recommended by a shareholder are described in Norfolk Southern’s proxy statement each year.

Under the proposed Rule 14a-11, governance and nominating committees will have only a very limited ability to consider the independence of shareholder access nominees, as compared with board nominees. The nominees may be included on the company’s proxy statement with no consideration of whether the candidate meets independence criteria set by the board of directors. In addition, the nominees must be included without consideration of whether they satisfy any subjective independence criteria of the exchanges. As a result, a shareholder access nominee could be included in a company’s proxy materials and ultimately be elected without the shareholders knowing whether the director candidate will ultimately qualify as an independent

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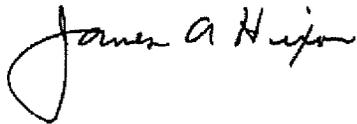
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director – potentially limiting the candidate’s committee service and even jeopardizing the board’s compliance with independence requirements in the company’s governing documents.

Furthermore, unlike in prior Commission proposals, there is no requirement that the nominees proposed by a shareholder or shareholder group be independent of that shareholder or group. Shareholders may therefore nominate affiliated persons, increasing the likelihood of shareholder nominees designed to serve a special interest rather than the interests of shareholders as a whole. This negative outcome could be avoided by requiring that nominees meet not only objective exchange independence criteria but also subjective criteria and independence and other standards set by the board, provided such standards are publicly disclosed. In addition, the rule should require that candidates be independent of the shareholder or shareholder groups nominating them, using, for example, the independence criteria set by the exchanges for company directors.

We hope that these comments will be helpful to the Commission and its Staff. We would be pleased to discuss with the Commission or its Staff any aspect of this letter. Questions may be directed to Virginia K. Fogg, General Solicitor, Norfolk Southern Corporation at 757-629-2837 or Virginia.Fogg@nscorp.com.

Respectfully submitted,

A handwritten signature in black ink that reads "James A. Hixon". The signature is written in a cursive style with a large, looped initial "J".

James A. Hixon
Executive Vice President Law and Corporate Relations
Norfolk Southern Corporation