

Alaska Air Group, Inc.

October 6, 2009

VIA ELECTRONIC MAIL: rule-comments@sec.gov

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

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

Dear Ms. Murphy:

The Securities and Exchange Commission (the "Commission") recently published Release No. 34-60089 (the "Proposing Release") to propose rules that would require all public companies to include stockholder nominees for election as director in their proxy materials (the "Proxy Access Proposal"). Alaska Air Group, Inc. ("Alaska Air" or the "Company") appreciates the opportunity to respond to the request for comments in the Proposing Release.

Introduction

We understand that the Commission's decision to publish the Proxy Access Proposal was made in response to concerns about the exercise of appropriate oversight of management, focus on stockholder interests, and accountability for decisions regarding issues such as compensation structures and risk management by the boards of directors of public companies.¹ While Alaska Air supports the Commission's promotion of board accountability and believes that meaningful communications with stockholders should be a priority for all boards and management teams, we respectfully assert that the Proxy Access Proposal will not promote effective corporate governance.

Alaska Air (NYSE: ALK) has operating revenues of more than \$3 billion, a workforce of more than 13,000 employees, and provides passenger air service to approximately 25 million passengers per year travelling through more than 90 cities in our expansive network in Alaska, the Lower 48, Hawaii, Canada and Mexico. Alaska Air has long had strong corporate governance policies and in recent years has taken steps to further enhance our Board's corporate governance practices, be responsive to our stockholders' concerns, and be appropriately focused

¹ Proposing Release at page 7.

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on our stockholders' interests. Some examples of Alaska Air's key governance practices include:

- One-year terms for all directors;
- Majority voting for directors in uncontested elections; and
- A requirement that at least 75% of our Board be independent and a current Board that is completely independent aside from the membership of our Chief Executive Officer.

The Proxy Access Proposal does not give proper consideration to these corporate governance processes in place at Alaska Air and many other public corporations, or the differences in state law duties that are applicable to boards of directors. Should the Commission determine to move forward with the Proxy Access Proposal, significant amendments should be incorporated into any Commission-mandated proxy access process.

Rule 14a-11, if Adopted, Should Balance Nominating Stockholder Eligibility Requirements Against the Potential Disruptive Effect of Proxy Access on a Company and its Board

Stockholder proposals of all types have a financial impact on all stockholders, as they require substantial attention and resources of the Company, including review by our in-house legal and investor relations staff, outside corporate and securities counsel, senior management, and our Board. Because Alaska Air is a "large accelerated filer" under the Commission's categorization of filers, a stockholder or stockholder group would be eligible under the Proxy Access Proposal to submit director nominees if it had owned 1% of our stock for one year. Although 1% of outstanding shares may represent a large investment for an individual stockholder, it is not a significant investment for a large group of stockholders, each of whom may own only small amounts of stock and have little at stake in the long-term financial success of the company. This ability to aggregate individual stockholder's holdings, in conjunction with the Proxy Access Proposal's low threshold, would permit special interest groups to obtain outsized influence on the Company.

In our view, the 1% threshold in proposed Rule 14a-11 is too low to ensure that the nominating stockholder or stockholder group has a substantial economic interest in the company and establish the obligation of a company to include a stockholder's or stockholder group's nominee(s) in a company's proxy materials.

We believe that a more substantial economic interest should be required in order for a stockholder or stockholder group to require the Company to include its nominee(s) in the Company's proxy materials. Any Commission-mandated proxy access process should require beneficial ownership of at least 5% of the Company's securities that are entitled to be voted on

the election of directors at a meeting of stockholders if an individual stockholder submits the nomination.

Additionally, given the relative ease which with a stockholder group may be formed to nominate directors and the potential that holds for abuse of the process by activist stockholders without an interest in the long-term economic well-being of the company, we strongly believe that beneficial ownership of at least 10% should be required where the director nominee(s) are nominated by a group of stockholders.

Under the Proxy Access Proposal, there would be a one-year holding period prior to submission of a stockholder nominee and no requirement that any nominating stockholder hold the company's stock beyond the date of the election of directors. We are of the view that the holding period in proposed Rule 14a-11 would not adequately protect the Company's stockholders against the potentially disruptive efforts of stockholders who intend to create pressure to increase short-term results (at the potential expense of the long-term interests of the Company and its stockholders). The concerns presented by the proposed one-year holding period are exacerbated by the absence of any requirement for any nominating stockholder to continue to own stock past the date of the meeting at which the directors (including, possibly, the stockholder's or stockholder group's nominee) are elected.

We believe that any Commission-mandated proxy access process should expand the holding period requirement for a nominating stockholder to at least two years, instead of the one year currently proposed. In the case of a nominating stockholder group, each member of the group should have held the securities for at least two years as of the date of the Schedule 14N. The Commission should also consider requiring the nominating stockholder or stockholder group, if its nominee is elected to the board, to continue to hold such shares until the following annual meeting date or at least through the first year of the stockholder nominee's directorship.

Finally, the Proxy Access Proposal would not require any nominating stockholder to have been at economic risk with regard to its ownership of the Company's stock during the required holding period. The absence of such a requirement further encourages the use of proxy access by stockholders who are motivated by short-term economic interests rather than the growth and long-term success of the Company. Accordingly, the Commission should consider requiring the nominating stockholder or stockholder group to be at full economic risk during the entirety of the required holding period.

For these reasons, the Proxy Access Proposal would put stockholders at significant risk by failing to limit proxy access appropriately to those stockholders with a long-term interest in the company. Therefore, at a minimum, we believe that any Commission-mandated proxy access process should require any nominating stockholder or stockholder group to:

- Hold significantly more than 1% of a company's stock;

- Hold the required amount of a company's stock on a "net-long" basis;
- Hold the required amount of a company's stock for a period of at least two years; and
- Commit to maintain ownership at least through the first year of the stockholder nominee's directorship, if elected.

Rule 14a-11, if Adopted, Should Apply to Companies Only Upon the Occurrence of Certain Triggers to Avoid Unwarranted Disruptions to Board Operations

The "one-size-fits-all" nature of the Proxy Access Proposal fails to differentiate between those companies that suffer from the issues the Commission indicates its intent to address and those companies where those issues are not present. This failure to differentiate is exacerbated by the far-reaching changes that would be required under the Proxy Access Proposal. Public companies will be forced to devote additional time and resources to meeting the new requirements of the proxy process – time and resources that could be devoted to the development of their business. Alaska Air is concerned that the proposed Commission-mandated proxy requirement will destroy more value than it protects.

In particular, the procedures of the Proxy Access Proposal raise the likelihood of having to integrate two new directors each year, a possibility that would be extremely disruptive to the Company. Alaska Air's commitment to its corporate governance guidelines and regulatory requirements means that it must analyze each new director's profile and relationships to monitor independence, potential related-party transactions, conflicts of interest, and compliance with our code of conduct. Alaska Air also is committed to providing an orientation to each new director to enable the new director promptly to gain an understanding of the operations and the financial condition of the Company. A frequent turnover of the members of our Board would weaken, rather than enhance, the continuity and stability that is essential to building strong working relationships and a thorough knowledge of our company and business. Further, the rapid turnover that may result from the Proxy Access Proposal could cause tremendous upheaval at a company and bring into question a company's ability to continue to focus on its business and long-term stockholder interests.

Given this potential to undermine a company's ability to focus time and resources on strategic planning, business development, innovation and improving the company's products and services, the Commission should limit the reach of the Proxy Access Proposal to those companies truly in need of reform. In its 2003 proposal regarding proxy access, the Commission proposed limiting the mandated proxy access process to those companies whose actions had demonstrated the issues that were intended to be addressed by the proxy access process. The inclusion of such a "trigger" was intended to limit the disruptive effect of the proxy access process to those companies where that process was appropriate. Consistent with the reasoning expressed by the

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Commission in 2003, we believe that any proxy access process mandated by the Commission should take effect only upon the occurrence of some “triggering” event, such as a majority withhold vote against one or more directors that is not followed by the Board’s acceptance of that director’s resignation.

Rule 14a-11, if Adopted, Should Promote the Existing Practices of Companies Designed to Ensure that Nominees Possess the Experience, Skills, and Characteristics that are in the Long-Term Interest of a Company and its Stockholders

Proposed Rule 14a-11 ignores the significant steps that many companies have taken to ensure that all director nominees presented to a stockholder vote possess skills and characteristics that are in the long-term interest of the companies and their stockholders. Alaska Air believes its Governance and Nominating Committee plays a vital role in the evaluation of director nominees and in the creation of a Board with the proper mix of experience, skills, and characteristics necessary to successfully lead a company of our size and complexity. The Proxy Access Proposal would supplant this role unnecessarily and without compelling justification.

The process for identifying director nominees requires a critical evaluation of the experience, skills, and characteristics of each potential director nominee as compared with the skills possessed by current board members. The Commission has recognized the significance of a complete evaluation of these characteristics in its recent proposals seeking to require enhanced disclosure regarding nominees for director.² However, under the Proxy Access Proposal, a nominating stockholder could propose a director nominee without regard to either the nominee’s particular experience or skills, the balance of experience and skills on the board as a whole, or any company- or industry-specific director skills that are important to the growth and success of the company. Any Commission-mandated proxy access process should require nominating stockholders to consider (and provide adequate disclosure regarding) the process for identifying each nominee and the specific experience, skills, and qualifications of each nominee and how such characteristics will benefit the board as a whole.

Proposed Rule 14a-11 further requires only a representation that, to the knowledge of the nominating stockholder, the nominee meets the objective criteria for independence set forth in the rules of the relevant national securities exchange or national securities association. However, state law typically permits companies to establish qualifications for directors that go beyond the objective criteria of the securities exchange or association. The Commission’s Proxy Access Proposal fails to account for the fact that companies, such as Alaska Air, have imposed director qualification requirements in excess of the minimum requirements imposed by applicable listing requirements. For example, in order to ensure that a director nominee can devote adequate time and effort to fulfill his or her board responsibilities, our Corporate Governance Guidelines encourage a limit on the number of public company boards on which our Board members serve,

² See “Proxy Disclosure and Solicitation Enhancements,” Release No. 34-60280 (July 10, 2009).

including a requirement that no director may serve on the audit committees of more than two other public company boards without specific approval from the Governance and Nominating Committee. We believe that any Commission-mandated proxy access process should require the nominating stockholder to represent (and provide adequate supporting information to demonstrate) that each nominee satisfies any additional non-discriminatory director qualification standards set forth in a company's governing documents.

Any Commission-mandated proxy access process should contain procedural safeguards to ensure that stockholder-nominated directors have qualifications that will benefit all stockholders as opposed to the special interests of one or a small group of minority stockholders. These safeguards should include the preservation of the role of the nominating committee in the stockholder nomination process by requiring, at a minimum, that stockholder nominees have an obligation, if requested, to complete standard director questionnaires and submit to background checks and other procedures customarily completed by a company's nominating committee for potential nominees.

In addition to establishing a process that provides no formal role for a company's nominating committee, the Proxy Access Proposal would prohibit a stockholder nominee from being included in a company's proxy materials if the nominating stockholder had any agreement with the company with regard to the inclusion of that nominee in the company's proxy materials. Such a prohibition would have the unfortunate effect of eliminating any informal role of the nominating committee by discouraging conversations between stockholders and a company regarding potential individuals who may be qualified to serve as director candidates. Given the essential stockholder-protection role played by our Governance and Nominating Committee in reviewing the qualifications of potential director nominees, it is not in the best interest of stockholders for any Commission-mandated proxy access process to establish a process that precludes any involvement of the committee – whether formal or informal – in the director nomination process when a nominee originates from a stockholder.

Rule 14a-11, if Adopted, Should Provide Stockholders with Sufficient Information to Make an Informed Voting Decision

Any Commission-mandated proxy access process should require sufficient disclosure for stockholders to make an informed voting decision regarding all nominees for director. The currently proposed Schedule 14N, which is intended to provide disclosures regarding the nominating stockholder and stockholder nominee(s), falls short of the proposed new requirements for disclosure regarding company-nominated directors³ and therefore provides stockholders with uneven information for their voting decision. Furthermore, it fails to require additional information, such as each nominee's relationship and experience with the company, its officers, and directors or a description of any contracts or agreements regarding each nominee's

³ See "Proxy Disclosure and Solicitation Enhancements," Release No. 34-60280 (July 10, 2009).

economic rights with respect to the company's securities, that is important and material to stockholders in making a determination as to whether to vote for a stockholder nominee.

Given the absence of fiduciary duties of the nominating stockholder to submit a nominee that is in the best interest of all stockholders, the ability to use proxy access to pressure a company to increase short-term results at the potential expense of long-term results by a stockholder, and the limited economic stake in the company required to be held by a stockholder under the Proxy Access Proposal, any Commission-mandated proxy access process should require the following disclosure regarding nominating stockholders and stockholder nominees in addition to that in the Proxy Access Proposal:

- The same information regarding stockholder nominees as would be required for company nominees under the Commission's proposal in Release No. 34-60280;
- Complete stock ownership information, including any stock lending, hedge, derivative, synthetic, or similar securities in the company, for the past three years in order to allow other stockholders to assess the nominating stockholder's or stockholder group's interests in the long-term health of the company;
- Any direct or indirect relationship (whether familial, employment, or other) between the nominating stockholder(s) and the director nominee(s);
- Any direct or indirect material interest of the nominating stockholder(s) or director nominee(s) in any transaction or series of transactions in which the company is a participant, including without limitation any interest that could reasonably be viewed to be a conflict of interest under applicable state law or a company's code of conduct;
- A statement that there are no material misstatements or omissions in the materials submitted by the nominating stockholder(s) for inclusion in the company's proxy statement;
- The number of times in the last three years that the stockholder or stockholder group has proposed director nominees under the Commission-mandated proxy access process to other companies, the names of those companies, and the outcomes of those elections; and
- Other information required to comply with a company's corporate governance guidelines (e.g., service on other public-company boards).

Rule 14a-11, if Adopted, Should Require Any Nominee to be Independent of the Nominating Stockholder or Stockholder Group

Alaska Air believes it is very important that proposed Rule 14a-11 provide that any nominee be independent of the nominating stockholder or stockholder group. Specifically, we recommend that proposed Rule 14a-11 provide that the nominee may not be:

- A nominating stockholder;
- A member of the immediate family of any nominating stockholder or member of a stockholder group; or
- Any employee of a nominating stockholder or member of a stockholder group.

There are several reasons that these limitations are appropriate. First, we believe it is consistent with the stated intent that Rule 14a-11 not be used to affect control of a company. By ensuring that the nominee is independent of the nominating stockholder or stockholder group, it is less likely that Rule 14a-11 will be used by those stockholders who are seeking to control the company. Second, the independence requirement will make it more likely that the stockholder nominee will discharge its director's fiduciary duties to all stockholders and not be unduly obligated to represent the interests of the nominating stockholder or stockholder group. Third, it will help ensure that the confidentiality of board meetings is maintained and that information from those meetings is not inappropriately shared with the nominating stockholder or members of a stockholder group. Alaska Air believes that for all of the above reasons, an independent nominee will be integrated more easily into the board and will not impose an undue burden on the nominating stockholder(s) and will help ensure the proper functioning of the board.

Rule 14a-11, if Adopted, Should Recognize the Timing Constraints Faced by Companies Preparing Proxy Materials

Given the timeframe for preparing the proxy materials for an annual meeting, companies will not have the time, nor should they be required, to fully investigate the statements made by a nominating stockholder or stockholder group. Moreover, proposed Rule 14a-11 provides no means for a company to seek to exclude statements that it believes to be false or misleading. The provision regarding liability in proposed Rule 14a-11(e) (and the corresponding proposed amendment to Rule 14a-9) should therefore state unequivocally that nominating stockholders bear full responsibility for information provided to a company for inclusion in its proxy materials, rather than attempting to shift this burden to the company in certain situations and liability for any false or misleading statements should reside solely and unconditionally with the nominating stockholder or stockholder group.

Like many companies, Alaska Air has an advance notice bylaw that requires stockholders to submit their nominees for director at least 90 but no more than 120 calendar days prior to the anniversary date of the previous year's annual meeting. Under proposed Rule 14a-11, a notice on Schedule 14N of an intent to require a company to include a stockholder nominee in the company's proxy materials must be filed by the date specified in the company's advance notice provisions, or, where no such provision is in place, no later than 120 calendar days before the date that the company mailed its proxy materials for the previous year's annual meeting (which would typically be 150 to 165 days prior to the annual meeting). The proposed procedure outlined in the Proxy Access Proposal by which a company would seek a no-action letter from the staff of the Commission in order to exclude a stockholder nominee under proposed Rule 14a-11 could typically take approximately 120 days. Thus, for companies like Alaska Air with advance notice bylaw provisions that require stockholders to submit their nominees for directors at least 90 days prior to the anniversary of the previous years' annual meeting, the no-action procedures would exceed the time available. For example, based on Alaska Air's historical schedule for filing and mailing its proxy materials, if Alaska Air received notice of a stockholder nomination 90 days before our annual meeting, the Company would have less than 50 days to seek a no-action letter from the staff of the Commission in order to exclude a stockholder nominee under proposed Rule 14a-11 (even though the Proxy Access Proposal requires that the no-action letter be submitted no later than 80 calendar days before the company files its definitive proxy statement with the Commission).

Moreover, if a company amends its advance notice bylaw to take into account the required time to comply with the proposed Rule 14a-11 no-action procedures, the increase in the minimum notice period might be held invalid under Delaware law, on the grounds that the period is unreasonably long and would have the effect of unduly constraining stockholders' right to nominate directors.

In contrast to proposed Rule 14a-11, the deadline for submitting a Rule 14a-8 proposal is 120 calendar days before the date the Company's proxy statement was released to stockholders in connection with the previous year's annual meeting. Therefore, in order to ensure that there is sufficient time to comply with the procedures for excluding a stockholder director nominee that does not comply with the requirements of proposed Rule 14a-11, we recommend that the Commission provide that the deadline for submitting a nominee pursuant to Rule 14a-11 be the same as the deadline for submitting a proposal pursuant to Rule 14a-8(d).

Comments Regarding the Proposed Revisions to Rule 14a-8(i)(8)

Should the Commission revise Rule 14a-8(i)(8) to require companies to include stockholder proposals relating to proxy access procedures in their proxy materials, the Commission should specifically permit companies to exclude from their proxy materials any stockholder proposal that would create a proxy access process that could result in the election of stockholder nominees to more than a majority of a company's board of directors.

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The Commission also should provide clear guidance regarding the application of the “substantially implemented” standard in Rule 14a-8(i)(10). In this regard, the “substantially implemented” standard should appropriately balance a company’s proxy access process against the potential disruption of a yearly stockholder access proposal. Unless the Rule 14a-8(i)(8) stockholder access proposal is designed to materially amend the company’s current procedure, the proposal should be properly excludable under Rule 14a-8(i)(10).

Conclusion

We appreciate this opportunity to comment on the Proxy Access Proposal and would be happy to discuss any questions with respect to our comments. Any such questions may be directed to me at 206.392.5731.

Sincerely,



Keith Loveless
Vice President, Legal and Corporate Affairs
General Counsel and Corporate Secretary

- cc: Hon. Mary L. Schapiro, Chairman, U.S. Securities and Exchange Commission
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Meredith B. Cross, Director, Division of Corporation Finance
- William S. Ayer, Chairman, President, and CEO Alaska Air Group
Karen A. Gruen, Associate General Counsel, Assistant Secretary