



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-0402



02030642

NO ACT
P.E 3-5-2002
1-68022

March 11, 2002

Richard Baltz
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1206

Re: CSX Corporation
Incoming letter dated March 5, 2002

Act 1934
Section _____
Rule 14A-8
Public Availability 3/11/2002
PROCESSED
APR 16 2002
THOMSON FINANCIAL P

Dear Mr. Baltz:

This is in response to your letters dated March 5, 2002, March 7, 2002 and March 8, 2002 concerning the shareholder proposal submitted to CSX by Robert Morse. On March 4, 2002, we issued our response expressing our informal view that CSX could not exclude the proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position.

The Division grants the reconsideration request, as there now appears to be some basis for your view that CSX may exclude the proposal under rule 14a-8(i)(2). Specifically, CSX's governing instruments do not opt out of the plurality voting that is otherwise specified by Virginia law, and therefore it appears that implementation of the proposal would result in CSX's proxy materials being false or misleading under rule 14a-9. Accordingly, we will not recommend enforcement action to the Commission if CSX omits the proposal from its proxy materials in reliance on rule 14a-8(i)(2).

Sincerely,

Martin P. Dunn
Associate Director (Legal)

cc: Robert D. Morse
212 Highland Ave.
Moorestown, NJ 08057-2717

ARNOLD & PORTER

202.942.5000
202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

March 5, 2002

BY HAND DELIVERY AND FACSIMILE

Martin P. Dunn
Associate Director (Legal)
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: CSX Corporation
Response of the Office of Chief Counsel
Division of Corporation Finance
Dated March 2, 2002

RECEIVED
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE
02 MAR -7 AM 10:45

Dear Mr. Dunn:

On behalf of our client, CSX Corporation (the "Company"), we are writing to ask that the Staff of the Securities and Exchange Commission (the "Commission") reconsider its decision relating to the Company's request to exclude from the Company's 2002 proxy statement a proposal (the "Proposal") from the Mary F. Morse Family Trust (the "Proponent"). If, upon reconsideration, the Staff does not concur in our view that the Proposal may properly be excluded from the 2002 Proxy Statement, the Company reserves the right to request that the Staff's decision be reviewed immediately by the Commission. Copies of the Staff's response dated March 2, 2002 (received by facsimile on March 4, 2002), the Company's no-action request dated December 26, 2001, and the Proposal and the Proponent's supporting statement are enclosed.

Prior to issuance of the Staff's response, the Staff issued to a no-action letter to The Coca-Cola Company (publicly available February 6, 2002) permitting exclusion of an identical proposal from the Proponent. We believe that the facts in the Coca-Cola no-action letter are virtually identical to the Company's situation and see no basis for the Staff's reaching a different result in the Company's case.

The Company is finalizing its proxy materials and expects to mail them to shareholders during the week of March 18, 2002. Accordingly, we ask that the Staff respond as promptly as practical to this request for reconsideration.

The Proposal would require the Company to indicate on its proxy cards that a shareholder may vote "against" the election of a director rather than "withhold authority"

ARNOLD & PORTER

Martin P. Dunn
Associate Director (Legal)
March 5, 2002
Page 2

to vote for a director. In that regard, we have previously noted that such an "against" vote would be inconsistent with controlling state law. Section 13.1-669(A) of the Virginia Stock Corporation Act (the "Virginia Act") provides that, "(u)nless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election directors." Thus, the Company is not permitted under the Virginia Act to implement the type of voting required by the Proposal.¹ Accordingly, we have expressed the view that implementation of the Proposal would require the Company to take an action inconsistent with and violative of the Virginia Act, and that the Proposal is therefore excludable under Rule 14a-8(i)(2).

In a plurality vote, as provided under the Virginia Act, a vote "against" a director will have no legal effect. To provide shareholders with a proxy card that indicates the shareholder may vote "against" a director, likely would mislead a shareholder into believing that a vote "against" a director will be given effect in the tabulation of votes cast. As recognized by the Commission in these identical circumstances, a vote against a nominee may have questionable legal effect and therefore could be confusing and misleading to shareholders.²

Section 13.1-669(A) of the Virginia Act is substantially similar to Section 216 of the Delaware General Corporation Code, which provides that in the absence of any contrary specification in a corporation's certificate of incorporation or bylaws, "[d]irectors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors." 8 Del. C. § 216(3). In permitting The Coca-Cola Company to exclude the same proposal under Rule 14a-8(i)(2), the Staff recognized that "because Coca-Cola's governing instruments do not opt out of the plurality voting that is otherwise specified by Delaware law, it appears that implementation of the proposal would result in Coca-Cola's proxy materials being false or misleading under rule 14a-9." The Coca-Cola Company (publicly available February 6, 2002). We know of no basis for the Staff's reaching a

¹ As noted in our prior submission, the Company's articles of incorporation do not contain provisions opting out of Section 13.1-669(A).

² Shareholder Communications, Shareholder Participation in the Corporate Electoral Process and Corporate Governance Generally, Release No. 34-16356 (November 21, 1979).

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Martin P. Dunn
Associate Director (Legal)
March 5, 2002
Page 3

different conclusion in the Company's case on substantially the same facts and comparable state law.

As a corollary to the above points, it also is our view that the Proposal could be omitted under Rule 14a-8(i)(3), which permits exclusion of a proposal when it is contrary to the Commission's proxy rules and regulations, including Rule 14a-9. In light of the inconsistency of the actions requested by the Proponent with the Company's articles of incorporation and the Virginia Act, it is our view that implementation of this requirement of the Proposal would result in a proxy card that would be false and misleading, in contravention of Rule 14a-9. Therefore, we believe that the Company may exclude the Proposal from its proxy materials pursuant to Rule 14a-8(i)(3).

We respectfully request, upon reconsideration, that the Staff advise the Company that it will not recommend enforcement action if the Proposal is excluded from the Company's proxy materials in reliance on the bases described above. Because we believe that the above analysis is dispositive of this issue, we are not restating our other grounds for excluding the Proposal or responding to the other matters raised in the Staff's no-action response. We, of course, request the right to do so in any future proceeding.

We are enclosing six copies of this letter. By copy of this letter, the Company is simultaneously informing the Proponent of the Company's request for reconsideration of the Staff's decision. Please acknowledge receipt of this letter by stamping the enclosed additional copy and returning it in the accompanying envelope.

Sincerely,



Richard E. Baltz

Enclosures

cc (w/encls): Grace K. Lee, Esq.

Stephen R. Larson, Esq.
CSX Corporation

March 2, 2002

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

Re: CSX Corporation
Incoming letter dated December 26, 2002

The proposal requests that the board make particular revisions to its proxy materials.

We are unable to concur in your view that CSX may exclude the proposal under rule 14a-8(i)(2). Accordingly, we do not believe that CSX may exclude the proposal from its proxy materials in reliance on rule 14a-8(i)(2).

We are unable to conclude in your view that CSX may exclude the proposal under rule 14a-8(i)(3) as contrary to the proxy rules. In this regard, we note that rules 14a-4(b)(1) and 14a-4(b)(2) are permissive rather than mandatory, and therefore do not prohibit limiting the discretionary authority given to management and the use of "against votes" in the context of an election of directors. Accordingly, we do not believe that CSX may exclude the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

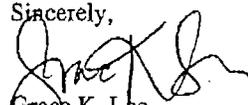
We are unable to concur in your view that CSX may exclude the entire proposal under rule 14a-8(i)(3). However, there appears to be some basis for your view that portions of the supporting statement may be materially false or misleading under rule 14a-9. In our view, the supporting statement must be revised as follows:

- delete the sentence that begins "This entirely unfair . . ." and ends ". . . by whatever means"; and
- delete the phrase that begins "until directors . . ." and ends ". . . some acceptable perks."

Accordingly, we will not recommend action to the Commission if CSX omits only these portions of the proposal and supporting statement from its proxy materials in reliance on rule 14a-8(i)(3).

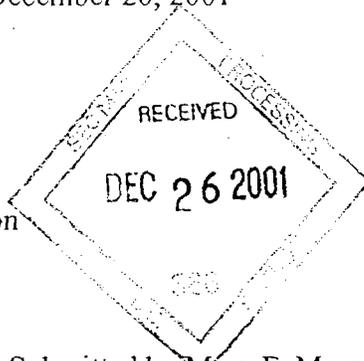
We are unable to concur in your view that CSX may exclude the proposal under rule 14a-8(i)(8). Accordingly, we do not believe that CSX may exclude the proposal from its proxy materials in reliance on rule 14a-8(i)(8).

Sincerely,


Grace K. Lee
Attorney-Advisor

December 26, 2001

Office of the Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549



Re: Shareholder Proposal Submitted by Mary F. Morse Family Trust

Ladies and Gentlemen:

We are writing to the staff (the "Staff") of the Division of Corporation Finance of the Securities and Exchange Commission (the "Commission") on behalf of CSX Corporation, a Virginia corporation (the "Company"). The Company has received a shareholder proposal (the "Proposal") from the Mary F. Morse Family Trust (the "Proponent"). A supporting statement accompanies the Proposal. A copy of the Proposal and supporting statement are attached to this letter as Exhibit A. The Proponent has asked the Company to include the Proposal and statement in support thereof in the Company's proxy statement for its 2002 annual shareholders meeting (the "2002 Proxy Materials").

∴

The Company believes that the Proposal is excludable from the 2002 Proxy Materials under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the "Act"), on any of the following grounds:

- Rule 14a-8(i)(8), as relating to the election of the Company's Board of Directors;
- Rule 14a-8(i)(2), as violative of the proxy rules; and
- Rule 14a-8(i)(3), as violative of state law.

By a copy of this letter, the Company is simultaneously informing the Proponent of the Company's intention to omit the Proposal from the 2002 Proxy Materials. The Company respectfully requests that the Staff advise the Company that it will not recommend to the Commission any enforcement action in respect of the Company's omission of the Proposal from the 2002 Proxy Materials.

ARNOLD & PORTER

Office of the Chief Counsel
Division of Corporation Finance
December 26, 2001
Page 2

Pursuant to Rule 14a-8(j) of the Act, we hereby enclose for filing six (6) copies of this letter and its attachments.

I. The Proposal may be omitted under Rule 14a-8(i)(8) because it relates to election for membership of the Company's Board of Directors.

Rule 14a-8(i)(8) permits a company to omit a proposal which relates to the election for membership on such company's board of directors. The Commission has stated that the principal purpose of the exception relating to elections is to make clear that the shareholder proposal process is not the proper means for conducting election contests, since other sections of the proxy rules, including Rule 14a-11, are applicable. See Release No. 34-12598 (July 7, 1976). The Staff has consistently permitted omission of shareholder proposals that would impact the election of directors. See, e.g., Bull & Bear U.S. Government Securities Fund, Inc. (July 16, 1998) (proposal calling for election of a certain individual to the board of directors); Masco Corp. (March 16, 1998) (proposal calling for replacement of outside directors); Boykin Lodging Company (March 22, 2000) (proposal calling for equal access on proxy cards of shareholder-nominees to board of directors).

The Proposal requests that the Company change the format of its proxy materials in two areas: (i) allowing shareholders to vote against directors, by removing the word "EXCEPT" and replacing it with the word "AGAINST" and (ii) removing the statement in the proxy materials informing shareholders that all authorized but non-voted proxies will be voted at the discretion of management of the Company.

By proposing that shareholders be permitted to vote against the Company's director-nominees, the Proponent is clearly attempting to affect the upcoming election of members of the Company's Board of Directors. The Proposal is the Proponent's attempt to change the Company's voting structure which, the Proponent alleges, "has benefited Management and Directors in their determination to stay in office by whatever means." Moreover, the Proponent's presumed request to prevent the Company from voting authorized but non-voted proxies also would have the clear effect of influencing the election of the Company's Board of Directors. The Company, like virtually every other company in the United States and in compliance with the Commission's proxy rules, assumes that a shareholder that signs a proxy card but does not vote, wishes to have such shares voted by the Company. The Company in its proxy card provides shareholders the mechanism to abstain from voting for shareholders who would like to be counted as present but would prefer to abstain from voting on one or more issues. If the Company were not allowed to vote authorized but non-voted proxy cards, not only would the

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Office of the Chief Counsel
Division of Corporation Finance
December 26, 2001
Page 3

change violate the Commission's proxy rules (as discussed below) but it may also have a significant impact on the election of the Company's Board of Directors.

The Staff has considered a similar issue in Lucent Technologies Inc. (November 3, 1998). Robert Morse, who we believe to be affiliated with Proponent, submitted similar language in the supporting statement of a proposal to Lucent requesting that shareholders be permitted to vote against company appointed director-nominees. In that matter, the Staff agreed with Lucent's position that the language in the reasoning section was excludable under Rule 14a-8(i)(8) because it related to the election of the company's board of directors. The Staff has consistently required similar language by Mr. Morse to be excluded from the supporting statements. See also Crown Cork & Seal Company, Inc. (February 24, 1999); Phillips-Van Heusen Corporation (April 6, 1999). For these reasons, the Company believes that it may properly exclude the Proposal from its 2002 Proxy Material.

II. The Proposal and supporting statements contain misleading statements and are violative of the Commission's proxy rules, and thus, may be omitted under Rule 14a-8(i)(3).

Rule 14a-8(i)(3) permits the omission of a shareholder proposal when such proposal or supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9, which prohibits false or misleading statements.

Violative of Commission proxy rules

1. Rule 14a-4(b)(2)

Rule 14a-4(b)(2) of the Act provides the requirements of a form of proxy which can be used in the election of the directors of a company. Rule 14a-4(b)(2) indicates that the form of proxy shall include the name of the person to be nominated and provide a mechanism by which a security is entitled to withhold authority to vote for a nominee. The rule does not provide a mechanism by which a shareholder may vote against a particular director. Instruction 2 of Rule 14a-4(b)(2) does indicate that a company is only required to provide a mechanism for voting against a board nominee if state law "gives legal effect to votes cast against the nominee." As discussed below, the Virginia Stock Corporation Act (the "Virginia Act") does not provide for votes cast against a nominee. The Virginia Act provides for election of directors based upon a plurality vote. The first part of the Proposal requires that shareholders be permitted to vote against directors.

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Page 4

Therefore, the Proposal is violative of the Commission's proxy rules and may be excluded pursuant to Rule 14a-8(i)(3).

2. *Rule 14a-4(b)(1)*

Rule 14a-4(e) of the act requires that the form of proxy shall provide "that the shares represented by the proxy will be voted..." To that end, the Act provides a mechanism in Rule 14a-4(b)(1) by which a company may vote authorized proxies for which a vote is not specified by discretionary authority. The Company, like most others, confers discretionary authority on its management to vote authorized proxies for which a choice is not specified by the shareholder. Rule 14(a)-4(b)(1) provides that the proxy "may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder *provided that the form of the proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case*" (emphasis added). The second part of the Proposal requires that the Company delete the language in the lower section of the proxy card "announcing that all signed proxies but not voted as to choice will be voted at the discretion of Management." The language which the Proponent has requested to be deleted is required by Rule 14a-4(b)(1) of the Act to highlight to stockholders how their shares will be voted in the case a shareholder returns a signed proxy which has not been voted. Therefore, the Proposal is violative of the Commission's proxy rules and may excluded pursuant to Rule 14a-8(i)(3).

False and Misleading Statements

Rule 14a-9 provides that "[n]o solicitation . . . shall be made by means of any proxy statement . . . containing any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading . . ." Examples of misleading statements are provided in the rule, including: "(m)aterial which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or association, without factual foundation. Note (b) to Rule 14a-9.

The supporting statements included by the Proponent are false, misleading and impugn the character of the management and directors of the Company. In the first supporting statement under "Reasons", for instance, the Proponent states that the "unfair voting arrangement has benefited Management and Directors in their determination to stay in office by whatever means." This statement wrongfully impugns the character of

ARNOLD & PORTER

Office of the Chief Counsel
Division of Corporation Finance
December 26, 2001
Page 5

management and the directors of the Company by suggesting, without any foundation, that management and the directors have been utilizing improper means to entrench their positions in office. To the contrary, the “entirely unfair voting arrangement” is the voting mechanism that is utilized by most U.S. companies and in full compliance with the Commission’s proxy rules. Moreover, in the second supporting statement under the heading “Further,” the Proponent states the Proposal should be in effect “until directors stop the practice of excessive extra remuneration for Management other than base pay and some acceptable perks.” This statement is false, misleading and impugns the character of management without providing any factual foundation for such allegations. The Proposal and the supporting statements contain the type of false and misleading statements that are contrary to the Commission’s proxy rules and therefore may be omitted from the 2002 Proxy Materials.

III. The Proposal may be omitted pursuant to Rule 14a-8(i)(2) because, if implemented, the Proposal would cause the Company to violate state law.

Under Rule 14a-8(i)(2), the implementation of a shareholder proposal that would cause the company to violate any state, federal or foreign law may be excluded. As a Virginia corporation, the Company is subject to the Virginia Act and must comply with each of its applicable provisions. §13.1-669(A) of the Virginia Act provides that “(u)nless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election...” The Virginia Act, therefore, provides that directors with the highest number of votes are elected. Shareholders are thereby permitted to vote for a director or withhold their vote. The Virginia Act does not provide a mechanism by which votes may be made against a director.¹ If the Company were to implement the Proposal, the Company would be violating the Virginia Act. Moreover, the Company’s articles of incorporation do not contain provisions allowing for the type of voting contained in the Proposal. Therefore, the Proposal may be omitted pursuant to Rule 14a-8(i)(2) because implementation would result in the Company violating applicable Virginia law.

¹ The Virginia Act (§13.1-666) does provide that actions on matters, *other than the election of directors*, are approved when the votes cast favoring the action exceed the votes cast opposing the action.

ARNOLD & PORTER

Office of the Chief Counsel
Division of Corporation Finance
December 26, 2001
Page 6

For the reasons set forth above, the Company intends to omit the Proposal from the 2002 Proxy Materials and respectfully requests that the Staff advise the Company that you will not recommend any enforcement action if the Proposal is excluded from the 2002 Proxy Materials. The Company is planning to mail its 2002 Annual Meeting proxy materials to its shareholders during the week of March 18, 2002.

Please acknowledge receipt of this letter and enclosures by stamping one enclosed additional copy of this letter and returning it in the enclosed self-addressed stamped envelope.

Sincerely,



Richard E. Baltz

cc: Stephen R. Larson
CSX Corporation

Exhibit A

Single Proposal Adjusted To Comply With Requests

September 27, 2001

PROPOSAL

I, Mary F. Morse, 212 Highland Ave. Moorestown, NJ 08057-2717, owner of \$2000.00 or more value of Company stock, wish to present the following proposal for printing in the Year 2002 Proxy material:

Management and Directors are requested to change the format of the Proxy Material in the two areas which are not fair to the shareowners: Remove the word "EXCEPT" and re-apply the word "AGAINST" in the Vote For Directors column. Remove the statement (if applicable) placed in the lower section announcing that all signed proxies but not voted as to choice will be voted at the discretion of Management.

REASONS:

This entirely unfair voting arrangement has benefited Management and Directors in their determination to stay in office by whatever means. Note that this is the only area in which an "AGAINST" choice is omitted, and has been so for about 15 years with no successful objections. Claiming of votes by Management is unfair, as a shareowner has the right to sign as "Present" and not voting, showing receipt of material and only desiring to prevent further solicitation of a vote.

FURTHER:

Since Management claims the right to advise an "AGAINST" vote in matters presented by Shareowners, said Shareowners likewise have the right to ask for a vote "AGAINST" all Company select nominees for Director, until directors stop the practice of excessive extra remuneration for Management other than base pay and some acceptable perks. THANK YOU.

Mary F Morse

March 7, 2002

BY HAND DELIVERY AND FACSIMILE

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: CSX Corporation
Response of the Office of Chief Counsel
Division of Corporation Finance
Dated March 2, 2002

Ladies and Gentlemen:

On behalf of our client, CSX Corporation (the "Company"), this letter supplements our letter dated March 5, 2002 (the "Prior Request") requesting that the Staff of the Securities and Exchange Commission (the "Commission") reconsider its decision relating to the Company's request to exclude from the Company's 2002 proxy statement a proposal (the "Proposal") from the Mary F. Morse Family Trust (the "Proponent").

In relevant part, the Prior Request stated that:

- Section 13.1-669(A) of the Virginia Stock Corporation Act (the "Virginia Act") requires a plurality of the votes cast for the election of directors, unless otherwise provided in the articles of incorporation, and
- The Company's governing instruments do not contain provisions opting out of Section 13.1-669(A) of the Virginia Act.

In our view the Proposal is therefore excludable under Rule 14a-8(i)(2) because the Company's governing instruments do not opt out of the plurality voting otherwise specified by the Virginia Act, and implementation of the Proposal would result in the Company's proxy materials being false and misleading under Rule 14a-9.

The Company has advised us that in order to meet the mailing schedule for the upcoming annual meeting, it must begin printing its proxy materials early next week. Accordingly, we respectfully request that the Staff respond as promptly as practical to this request for reconsideration.

ARNOLD & PORTER

Office of Chief Counsel
Division of Corporation Finance
March 7, 2002
Page 2

We are enclosing six copies of this letter. By copy of this letter, the Company is simultaneously informing the Proponent of this supplement to the Prior Request. Please acknowledge receipt of this letter by stamping the enclosed additional copy and returning it in the accompanying envelope.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Baltz", with a long horizontal flourish extending to the right.

Richard E. Baltz

cc: Martin P. Dunn, Esq.

Grace K. Lee, Esq.

Stephen R. Larson, Esq.
CSX Corporation

ARNOLD & PORTER

Richard E. Baltz
Richard_Baltz@aporter.com

202.942.5124
202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

March 8, 2002

BY HAND DELIVERY AND FACSIMILE

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: CSX Corporation
Response of the Office of Chief Counsel
Division of Corporation Finance
Dated March 2, 2002

Ladies and Gentlemen:

On behalf of our client, CSX Corporation (the "Company"), this letter supplements our letters dated March 7, 2002 and March 5, 2002 (the "Original Letters") requesting that the Staff of the Securities and Exchange Commission reconsider its decision relating to the Company's request to exclude from the Company's 2002 proxy statement a proposal from the Mary F. Morse Family Trust.

We have offices located in the Commonwealth of Virginia. We confirm that, for the purposes of Rule 14a-8(j)(2)(iii), it is our opinion that, as a matter of Virginia law, in an election of directors where directors are elected by a plurality vote, a vote against a nominee for election as a director has no effect in determining whether a nominee is elected as a director.

RECEIVED
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE
02 MAR -8 PM 2:46

ARNOLD & PORTER

Office of Chief Counsel
Division of Corporation Finance
March 8, 2002
Page 2

We are enclosing six copies of this letter. Please acknowledge receipt of this letter by stamping the enclosed additional copy and returning it in the accompanying envelope.

Sincerely,

Richard E. Baltz /DC-S
Richard E. Baltz

cc: Martin P. Dunn, Esq.
Grace K. Lee, Esq.
Stephen R. Larson, Esq.
CSX Corporation