

**FedEx Corporation**  
**942 South Shady Grove Road**  
**Memphis, Tennessee 38120**  
**(901) 818-7500**

**VIA E-MAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

August 17, 2009

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

**Re: Proposed Rule: Facilitating Shareholder Director Nominations**  
**(Release Nos. 33-9046; 34-60089; IC-28765)**  
**File No. S7-10-09**

Dear Ms. Murphy:

On June 10, 2009, the Securities and Exchange Commission issued the above-referenced rule proposal on stockholder access to company proxy statements for director nominations. FedEx Corporation respectfully submits this comment letter to the Commission in response to the proposal.

***About FedEx and Our Firm and Longstanding Commitment to High Quality Corporate Governance.*** FedEx provides customers and businesses worldwide with a broad portfolio of transportation, e-commerce and business services. With annual revenues of \$35 billion, the company offers integrated business applications through operating companies competing collectively and managed collaboratively, under the respected FedEx brand. Consistently ranked among the world's most admired and trusted employers, FedEx inspires its more than 280,000 team members to remain "absolutely, positively" focused on safety, the highest ethical and professional standards and the needs of their customers and communities. FedEx stock is widely held, with over 200 thousand shareowners holding approximately 300 million outstanding shares of common stock.

FedEx has an independent Board of Directors committed to the highest quality corporate governance. Reflecting this commitment, we have embraced the spirit of corporate governance reform rather than merely meeting the minimum compliance standards set forth in the Sarbanes-Oxley Act of 2002 and the New York Stock Exchange's corporate governance listing standards. In addition, we have an active shareholder outreach program and engage in open and candid discussions with investors on matters related to corporate governance. Over the past several years, we have implemented many governance enhancements, including:

- The Board's standards for determining director independence (included in our Corporate Governance Guidelines) are stricter than applicable legal requirements, and all but one of our twelve directors qualify as independent under these standards.
- We have adopted a majority-voting standard in uncontested director elections and a resignation requirement for directors who fail to receive the required majority vote. The Board is prohibited from changing back to a plurality-voting standard without the approval of our stockholders.
- We have eliminated the classified structure of the Board to allow for the annual election of all directors.
- We have amended our charter and bylaws to eliminate all supermajority shareholder voting requirements.

***FedEx Remains Opposed to Shareholder Proxy Access for Director Nominations.*** FedEx joins the Business Roundtable, the U.S. Chamber of Commerce, the Society of Corporate Secretaries & Governance Professionals and many others in opposing a new federal substantive right of proxy access, as contained in proposed Rule 14a-11. We concur with the well-articulated legal positions of the BRT and the U.S. Chamber of Commerce that adopting proposed Rule 14a-11 and thereby creating a federal proxy access right would exceed the Commission's limited statutory authority. Moreover, as we have discussed in previous comment letters to the Commission on the issue of shareholder proxy access, we believe that allowing stockholders to access company proxy materials for director nominations would not improve corporate governance and would harm companies, boards of directors and stockholders by:

- ***Significantly Disrupting Company and Board Operations.*** If proposed Rule 14a-11 is adopted, contested director elections could become routine. Divisive proxy contests would substantially disrupt company affairs and the effective functioning of the board of directors. Companies would be compelled to devote significant financial resources in support of board-nominated candidates. In addition, management and directors would be required to divert their time from managing and overseeing company business to supporting board director nominees.
- ***Balkanizing Boards of Directors.*** The election of shareholder-nominated candidates would create factions on the board, leading to dissension and delay and thereby precluding the board's ability to function effectively. A politicized board of directors cannot effectively serve the best interests of all stockholders.

- *Enhancing the Ability of Special Interest Groups to Elect Directors.* Adoption of proposed Rule 14a-11 would facilitate the nomination and election of special interest directors to further the particular agendas of the stockholders who nominated them, rather than the interests of all stockholders and the company's long-term business goals.
- *Discouraging Highly Qualified Director Candidates from Serving.* The prospect of routinely standing for election in a contested situation would deter highly qualified individuals from board service. Such a prospect also might cause incumbent directors to become excessively risk averse, thereby stifling the innovation that is the *sine qua non* of United States business.
- *Reducing Business Competitiveness.* This country's director-centric model of corporate governance has created the most successful public corporations, capital markets and economy in the world. Under this longstanding model, the board is able to consider and balance the interests of all the corporation's stockholders and other stakeholders in order to protect the corporation's assets and investment capital and maximize the long-term success of the corporation. We see no reason to disrupt the current paradigm in the pursuit of objectives sought by a minority of activists.

The most effective means for stockholders to participate in the director nomination process is through the board nominating committee. The members of the nominating committee and the board have a fiduciary duty to act in good faith for the best interests of the company and its stockholders. The nominating committee and the board of directors are best situated to assess the director expertise and qualifications required by the board. In so doing, the nominating committee and the board can achieve an optimal balance of directors that will best serve the company and the interests of all stockholders. Allowing stockholders to nominate directors in the company proxy statement would seriously undercut the role of the board and the nominating committee in the most crucial element of corporate governance, the election of directors.

***Shareholder Proxy Access for Director Nominations Is and Should Remain a Matter of State Law.*** Notwithstanding our continued opposition to the principle of shareholder proxy access, if the Commission insists on taking some action to facilitate shareholder director nominations, we urge the Commission to refrain from adopting proposed Rule 14a-11 and instead allow proxy access systems to develop under the framework of private ordering and shareholder choice created by state law. In this regard, as discussed below, the Commission could focus on amending Rule 14a-8(i)(8) to permit proxy access shareholder proposals in appropriate circumstances.

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The “one-size-fits-all” approach of proposed Rule 14a-11 would undercut an important and successful aspect of our state system of corporate governance: flexibility for corporations and their shareholders to respond promptly and creatively to unanticipated circumstances. FedEx and many other corporations are incorporated in Delaware, and that state’s law now gives stockholders and boards of directors broad power to adopt bylaws establishing the terms and conditions of rights relating to the election of directors. As a result, as with the recent and wide adoption of bylaws prescribing a majority voting standard in the election of directors, we expect that stockholders and boards at many companies will soon begin adopting proxy access or proxy expense reimbursement bylaws that implement their own preferences on a basis tailored to the circumstances of the individual corporation — but only in the absence of a mandatory, universally applicable rule such as proposed Rule 14a-11. The adoption of proposed Rule 14a-11 would stifle the inevitable good faith efforts of stockholders and boards of directors to set the terms of a proxy access system suited to the diverse conditions and needs of individual corporations.

In addition to impairment of stockholder choice under state corporate law, there are other considerable costs and uncertainties that would result from the adoption of proposed Rule 14a-11. Proposed Rule 14a-11 would establish an entirely new and complex administrative system, requiring extensive time and resources from the Commission staff, to mediate disputes over the interpretation and application of the rule. This system would inevitably require continual modification, and we believe such modification would be more easily and effectively accomplished through an evolutionary process guided by broad stockholder consensus rather than through frequent rulemaking by the Commission.

In sum, we believe that a federal proxy access right is neither necessary nor advisable. There has been monumental change in corporate governance practices over the past several years, largely as a result of companies’ willingness to engage with their shareholders on reform measures such as those adopted by FedEx and noted above. Recent activity in Delaware and other states shows that if corporate shareholders or directors determine that a proxy access system may be beneficial, amendments to state corporate law and company governing documents can and will be enacted.

***Necessary Amendments to Rule 14a-8.*** If the Commission decides that federal action is needed at this time, we request that the Commission adopt revised amendments to Rule 14a-8(i)(8) instead of a federal proxy access right. Amending Rule 14a-8(i)(8) to allow proxy access shareholder proposals would further the state law interest addressed above and would enable companies and their shareholders to tailor an access system to the unique needs of the individual company. We strongly believe, however, that the current ownership, holding period and resubmission thresholds of Rule 14a-8 are too low and especially so in the context of a proxy access proposal. Accordingly, if Rule 14-8(i)(8) is amended to allow proxy access proposals, we respectfully urge the Commission to take the following steps to

strengthen the eligibility requirements for including any stockholder proposals — but at the very least, proxy access proposals — in company proxy statements under Rule 14a-8:

- Significantly increase the ownership threshold for submitting stockholder proposals, which currently requires ownership of only \$2,000 in market value of the company's shares;
- Significantly increase the minimum share holding period for submitting stockholder proposals, which currently requires ownership for only one year; and
- Significantly increase the thresholds for resubmitting stockholder proposals, under which a proposal that receives as little as 3% of votes cast can be eligible for resubmission the next year.

Based upon our recent experience, stockholder proposals are often sponsored by special interest groups, such as organized labor, who (i) own a *de minimis* amount of company shares — frequently little more than is necessary to meet the low eligibility requirements, and (ii) have a narrow agenda that is inimical to the best interests of the company and its stockholders as a whole. Taking the above steps will reduce the unnecessary time, effort and other resources that companies and the Commission spend on these narrow, special-interest stockholder proposals that clearly are not in the best interests of the companies and their stockholders as a whole.

***Necessary Amendments to Proposed Rule 14a-11.*** If the Commission nonetheless determines to move forward with a federal proxy access right, we direct the Commission's attention to the comment letters of the BRT and the Society of Corporate Secretaries & Governance Professionals on the rule proposal for a more detailed analysis of proposed Rule 14a-11 — namely, the extensive revisions to the rule that, if not included, would make it particularly problematic and unworkable. For example:

- ***Appropriate Triggers.*** The federal proxy access right should apply, if at all, only when certain triggering events have occurred indicating that a more effective proxy process is necessary at a particular company. To this end, we believe that an appropriate trigger would be that a majority of the outstanding shares has voted against the reelection of a certain number of directors and the board has refused to accept any of those directors' mandatory resignations. Triggering events should not include items such as poor financial performance, earnings restatements or other events, such as a board's decision not to implement a majority-approved stockholder proposal, that do not necessarily indicate an ineffective proxy process.

- *Higher and Longer Eligibility Thresholds.* Shareholders should be eligible to nominate proxy access directors, if at all, only if they own a meaningful percentage of a company's shares for a significant period of time. To this end, we suggest a minimum ownership level of 5% for individuals and 10% for multiple shareholders acting together, and the requisite shares should have been held for at least two years. We are convinced that a lower stock ownership level or shorter holding period would not represent a sufficiently substantial, long-term interest in a company that would justify the significant costs and disruption of regular proxy contests.
- *Limit of One Proxy Access Nominee a Year.* Federal proxy access rules, if adopted, should limit the number of proxy access nominees to one director each annual meeting season. Simultaneously adding multiple directors with little or no experience with their new company could greatly disrupt board function and place an unnecessary strain on company resources. In the case of multiple proxy access nominees, the nominee submitted by the shareholder or shareholder group with the largest beneficial ownership should be included, rather than the first one submitted.
- *No Affiliation Between Nominees and Nominating Shareholders.* Federal proxy access rules, if adopted, should prohibit proxy access nominees from being affiliated with the nominating shareholder or shareholder group. This requirement is essential to help ensure that director candidates are not chosen based on their allegiance to the narrow interests of a particular shareholder to the possible detriment of others. Furthermore, proxy access nominees should satisfy the director independence and qualification requirements adopted by the board of directors and disclosed in the proxy statement.
- *Appropriate Resubmission Restrictions.* Shareholders should not be permitted to nominate proxy access directors for a reasonably long period of time — we suggest three years — if their prior proxy access director nominee fails to obtain a reasonably significant percentage of votes cast — we suggest 40%.

Most importantly, a federal proxy access right, if adopted, should not preempt the proxy access procedures established or authorized by state law or a company's governing documents. Accordingly, if the Commission adopts both proposed Rule 14a-11 and the proposed amendments to Rule 14a-8(i)(8), please make clear that Rule 14a-11 would not apply where a company's stockholders or board of directors have adopted a proxy access or proxy expense reimbursement bylaw, or where a company is incorporated in a state whose law includes a proxy access right or the right to reimbursement of expenses that shareholders incur in connection with proxy contests.

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We sincerely appreciate your considering our comments and concerns. If you would like more information, please feel free to contact me at your convenience.

Sincerely yours,

**FedEx Corporation**

/s/ CHRISTINE P. RICHARDS

Christine P. Richards  
*Executive Vice President,  
General Counsel and Secretary*

cc: Frederick W. Smith  
Alan B. Graf, Jr.  
Robert T. Molinet

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