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FedEx Corporation

VIA E-MAIL *(chairmanoffice@sec.gov; schapirom@sec.gov; aguilarl@sec.gov; caseyk@sec.gov; paredest@sec.gov; and waltere@sec.gov)*

August 20, 2010

The Honorable Mary L. Schapiro, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Kathleen L. Casey, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Elisse B. Walter, Commissioner
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-9303

Re: **Shareholder Proxy Access**

Dear Chairman Schapiro and Commissioners:

On August 18, 2010, the Securities and Exchange Commission announced that it would consider, at an open meeting of the Commission to be held on August 25, 2010, whether to adopt changes to the federal proxy and other rules to facilitate director nominations by shareholders.

As Chairman of the Board, President and Chief Executive Officer of FedEx Corporation, I respectfully urge you not to adopt rules that would require companies to include shareholder nominees for director in company proxy materials. FedEx has filed detailed comments on the Commission's previous shareholder access proposals. See *http://www.sec.gov/comments/s7-10-09/s71009-269.pdf* (August 17, 2009); *http://www.sec.gov/comments/s7-17-07/s71707-74.pdf* (October 1, 2007); and *http://www.sec.gov/rules/proposed/s71903/fedex121903.htm* (December 19, 2003) (copies attached). For the reasons set forth in those comment letters, FedEx remains strongly opposed to allowing shareholders to use company proxy materials for contested director elections. In particular, we continue to believe that proxy access is not in the best long-term interests of shareowners, and we are particularly concerned that it would disrupt the fragile economic recovery. We remain convinced that shareholder proxy access would not improve corporate governance and would harm companies, boards of directors and stockholders by:

- *Significantly Disrupting Company and Board Operations.* If shareholder proxy access rules are 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 shareholder proxy access rules 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 and the current fragile economic recovery in the pursuit of objectives sought by a minority of activists.

If the Commission nevertheless moves forward to implement shareholder proxy access, I urge you to create a workable process that serves the interests of mainstream investors, not only special interests. As an example:

- *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 economic interest in a company that would justify the significant costs and disruption of regular proxy contests.

- *Appropriate Triggers.* The 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.

- *Limit of One Proxy Access Nominee a Year.* 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.* 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%.

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

Sincerely,

Frederick W. Smith

Attachments

FWS/vw
210278

cc: Alan B. Graf, Jr.
Christine P. Richards
Robert T. Molinet
Larry Burton (Business Roundtable)

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VIA E-MAIL (*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.

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.

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

[787569]

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VIA E-MAIL (*rule-comments@sec.gov*)

October 1, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-9303

Re: **Proposed Rule: Shareholder Proposals Relating to the Election of Directors (File No. S7-17-07; Release No. 34-56161; IC-27914)**
Proposed Rule: Shareholder Proposals (File No. S7-16-07; Release No. 34-56160; IC-27913)

Dear Ms. Morris:

On July 27, 2007, the Securities and Exchange Commission issued two alternative rule proposals on stockholder access to company proxy statements for director nominations. FedEx Corporation respectfully submits the following comments in response to the proposals.

One proposal, which FedEx strongly supports, would codify the Commission's existing position that stockholder proposals on proxy statement access for board nominations are categorically excludable under Rule 14a-8(i)(8) under the Securities Exchange Act of 1934 (which permits the exclusion of any proposal that "relates to an election for membership on the company's board of directors"), a position that was called into question by the U.S. Court of Appeals for the Second Circuit in American Federation of State, County & Municipal Employees v. American International Group, Inc., 462 F.3d 121 (2d Cir. 2006). See Proposed Rule: Shareholder Proposals Relating to the Election of Directors (File No. S7-17-07; Release No. 34-56161; IC-27914).

The other proposal (the "Access Proposal"), which FedEx strongly opposes, would allow stockholders owning 5% or more of a company's voting shares to include in the company's proxy materials a proposal for an amendment to the company's bylaws that would mandate procedures to allow stockholders to nominate director candidates. See Proposed Rule: Shareholder Proposals (File No. S7-16-07; Release No. 34-56160; IC-27913).

FedEx respectfully urges the Commission (i) to adopt the proposal reaffirming its current interpretation of Rule 14a-8(i)(8) and to ensure that this interpretation is consistently and permanently applied, and (ii) not to adopt the Access Proposal. We direct the Commission's attention to The Business Roundtable's comment letter on these rule proposals for a more detailed analysis of the various issues raised by the proposals. We concur with each of the views expressed by the BRT in that letter.

We believe that allowing stockholders to use 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 the Access Proposal were 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 the Access Proposal 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. As Professor Lynn Stout eloquently argued in a recent Wall Street Journal editorial, corporations and economies succeed best when the corporations are controlled by boards of directors, not by stockholders. See Lynn A. Stout, *Corporations Shouldn't Be Democracies*, Wall St. J., Sept. 27, 2007, at A17. 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 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.

In response to the Commission's request for comments on whether additional changes to Rule 14a-8 would be appropriate, we respectfully urge the Commission to take the following steps to toughen the eligibility requirements for including non-binding stockholder proposals in company proxy statements:

- 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; 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 typically sponsored by groups who (i) own a *de minimis* amount of company shares — frequently little more than is necessary to meet the low eligibility requirements; (ii) have a narrow agenda that is inimical to the best interests of the company and its other stockholders; and (iii) submit the proposals for no reason other than to promote this narrow agenda and, in some cases, even to harass the company. Taking the above steps, among others outlined in the BRT letter, 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.

We sincerely appreciate your considering FedEx's 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
Thomas J. Lehner, Director of Public Policy, Business Roundtable

[698764]

FedEx Corporation
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By E-Mail

December 19, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: **Proposed Rule: Security Holder Director Nominations (Release No. 34-48626)**
File No. S7-19-03

Dear Mr. Katz:

On October 14, 2003, the SEC proposed new rules that would require companies to include shareholder nominees for director in company proxy materials under specified circumstances. FedEx Corporation respectfully submits the following responses to certain questions raised by the SEC in the rule proposal.

Question A.1 ***Should the Commission adopt revisions to the proxy rules to require companies to place security holder nominees in the company's proxy materials?***

No. FedEx strongly supports the recently approved New York Stock Exchange corporate governance listing standards. We believe that as a result of such rules and other recent corporate governance reforms:

- high quality corporate governance will become the norm;
- shareholders will better understand the operations and policies of boards of directors; and
- management and boards of directors will be highly responsive to shareholder concerns.

Allowing shareholders to use company proxy materials for contested director elections will not improve corporate governance and will harm companies, boards of directors and shareholders by:

- *Significantly Disrupting Company and Board Operations*. If the SEC adopts the proposed rules, contested director elections could become routine. Divisive proxy contests would regularly and substantially disrupt company affairs and the effective functioning of the board of directors. Companies will be compelled to devote significant financial resources in support of board-nominated candidates. In addition, management and directors will 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 could 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 shareholders.

- *Enhancing the Ability of Special Interest Groups to Elect Directors.* Adoption of the proposed rules would facilitate the nomination and election of special interest directors who further the particular agendas of the shareholders who nominated them, rather than the interests of all shareholders 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 will deter highly qualified individuals from board service. Such prospect also may cause incumbent directors to become excessively risk averse, thereby stifling the innovation that is the *sine qua non* of United States business.

Moreover, allowing shareholders to place board nominees in company proxy materials is wholly inconsistent with, and will undermine, the new NYSE listing standards and recently adopted SEC rules requiring disclosure of nominating committee functions. The NYSE standards have strengthened the role and independence of board nominating committees. The new SEC rules requiring disclosure of nominating committee functions will allow shareholders to better understand the nominating committee's process and policies for identifying and evaluating director nominees. These rules also will facilitate increased shareholder input and appropriate participation in the director nomination process, as well as compel nominating committees to seriously consider bona fide director candidates nominated by shareholders.

The most effective means for shareholders 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 shareholders. 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 stockholders. Allowing shareholders 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.

The proposed shareholder access rules (1) will not improve corporate governance, (2) will significantly disrupt board and company operations and (3) will significantly diminish board accountability to shareholders. Accordingly, we strongly oppose, and urge you not to adopt, the proposed rules. Moreover, the SEC needs to allow the extensive corporate governance reforms, particularly the new NYSE corporate governance listing standards, to be fully implemented before proceeding with additional regulation. We agree with the SEC that the new listing standards represent "a significant strengthening of the nomination process."[1] With the increased independence of boards of directors, the strengthened role and independence of nominating committees and the enhancement of shareholder-director communications, boards will be more accountable to shareholders and responsive to their concerns. These corporate governance reforms will best achieve the goals the SEC tries to address in the proposed shareholder access rules. If implemented, the proposed rules would simply negate many of the significant benefits that shareholders will otherwise reap from these reforms.

As discussed above, we believe that it would be injudicious for the SEC to adopt the proposed shareholder access rules. If the SEC nevertheless proceeds with consideration of the proposed election contest rules, it will need to substantially revise the proposed rules to better accord with the SEC's stated intent of targeting the small number of companies that have been unresponsive to the concerns of long-term shareholders. The remainder of this letter responds to some of the SEC's questions regarding specific aspects of the proposed rules and provides suggestions to ensure that the mechanism is triggered only in the appropriate circumstances.

Question C.3 ***As proposed, the nomination procedure could be triggered by withhold votes for one or more directors of more than 35% of the votes cast. Is 35% the correct percentage?***

No, a threshold of 35% of the votes cast for a minimum of one director is too low.

This proposed trigger does not take into account the realities of the proxy process, particularly the considerable influence of the proxy voting guidelines of Institutional Shareholder Services (ISS). ISS has its own criteria to determine the independence of board members, which are often substantially narrower than the NYSE's new independence requirements. For example, a non-employee director is classified by ISS as an "affiliated outside director" if he or she has

[1] Final Rule: Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors; Release Nos. 33-8340, 34-48825; 68 Fed. Reg. 69204, 69210 (December, 11, 2003).

ever served as an executive officer of the company. ISS's standards do not include a look-back period after which a director will be considered fully independent. ISS recommends that stockholders withhold votes from any affiliated outside director who serves on the audit, compensation or nominating committee.[2]

Based on such standards, ISS recommends that stockholders withhold votes from an outside director serving on the audit committee who was an executive officer of the company twenty-five years prior, although the full board has affirmatively determined that the director is independent. Many large institutional investors follow ISS's recommendation and will, therefore, withhold votes from the director although he or she is, in fact, fully independent and is an invaluable contributor to the company's success based on his or her prior experience with the company.

Consequently, a 35% withhold threshold can easily be reached in the complete absence of any factors indicating an ineffective proxy process and although the company's performance has been stellar and shareholder value has been significantly enhanced. Such an event will regularly occur not because a board has been unresponsive to shareholder concerns, but simply because it is the by-product of the proxy process and the voting practices of institutional investors. Furthermore, in such circumstances, shareholder access will be triggered before the board of directors and nominating committee can address any shareholder concerns that may be raised by such voting results.

In addition, shareholder access will be triggered although almost two-thirds of the votes are in favor of the board's slate of directors. Access also will be triggered if a single director receives the required number of withhold votes, while the rest of the board slate receives 100% of the votes cast. Given the high costs and substantial disruption caused by a contested election, a 35% withhold vote for a single director should not be sufficient to trigger shareholder access.

The threshold for this trigger needs to be substantially higher in order to only apply to situations in which there may be evidence of dissatisfaction with the proxy process. At a minimum, the threshold should be that at least a majority of the outstanding shares vote to withhold authority for two consecutive years with respect to three or more board nominees standing for election.

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[2] ISS U.S. Proxy Voting Manual.

<u>Question C.4</u> Should the nomination procedure triggering event related to direct access security holder proposals trigger the procedure only where a more than 1% holder or group submits the proposal? If not, what would be a more appropriate threshold, if any? . . . Should the required holding period for the securities used to calculate the security holder's ownership be longer than one year? If so, what is the appropriate holding period?

In the proposed rules, the SEC indicates that the triggering events were formulated in order to "ensur[e] that the process is used by security holders who represent a substantial and long-term interest in the subject company."[3] A 1%, one-year ownership requirement does not represent a sufficiently substantial, long-term interest in a company that justifies the significant costs and disruption of regular proxy contests. A 25%, two-year threshold represents a significant, long-term commitment to a company and is, therefore, a more appropriate requirement.

<u>Question C.6</u> As proposed, a direct access security holder proposal could result in a nomination procedure triggering event if it receives more than 50% of the votes cast with regard to that proposal. Is this the proper standard? Should the standard be higher?

The SEC claims that this triggering event is "tied closely to evidence of ineffectiveness or security holder dissatisfaction with a company's proxy process."[4] The triggering event will apply, however, to <u>any</u> company, not merely those where there is a perceived lack of responsiveness to shareholder concerns. ISS will likely revise its proxy voting guidelines to support shareholder access proposals as a matter of course, regardless of a particular company's circumstances. Shareholders at all companies likely will vote in favor of shareholder access, if for no other reason than to make access available in future years in the event the company becomes unresponsive.

Because there is a complete lack of correlativity to the SEC's purported intent, this triggering event is wholly inappropriate.

<u>Question C.11</u> We have discussed our consideration of and requested public comment on the appropriateness of a triggering event premised upon the company's non-implementation of a security holder proposal that receives more than 50% of the votes cast on the proposal. Should such a triggering event be included in the nomination procedure?

A board of directors' failure to implement an approved shareholder proposal is not necessarily indicative of an ineffective proxy process. The board has a fiduciary obligation to consider whether, in its judgment, implementation of the shareholder proposal is in the best

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[3] 68 Fed. Reg. 60784, 60790 (October 23, 2003).
[4] *Id.*

interests of the company and its shareholders. The failure to implement a shareholder proposal is the product of this independent judgment. Directors should not be coerced to automatically implement a shareholder proposal in violation of their fiduciary obligations so as to spare the company a costly proxy contest.

If the triggering event regarding withhold votes remains in the proposal, directors will still feel compelled to automatically implement a majority-approved stockholder proposal. ISS recommends that shareholders withhold votes from any directors who do not implement a shareholder proposal approved by the majority of outstanding shares.[5] As a result, directors who, in the exercise of their independent judgment and fiduciary obligations, do not implement a shareholder proposal are likely to receive a high number of withhold votes and otherwise trigger the access process.

Questions E.2 and E.3 ***Is it appropriate to include a restriction on security holder eligibility that is based on percentage of securities owned? If so, is the more than 5% standard that we have proposed appropriate? . . . Should there be a restriction on security holder eligibility that is based on the length of time securities have been held? If so, is two years the proper standard?***

A minimum ownership and holding period requirement for nominating shareholders is absolutely appropriate. Given the significant costs of a proxy contest and the relative ease with which shareholders may aggregate their shares to meet the threshold, however, the minimum ownership percentage should be no less than 25%.

Question E.4 ***As proposed, a nominating security holder would be required to represent its intent to hold the securities until the date of the election of directors. Is it appropriate to include such a requirement? Would it be appropriate to require the security holder to intend to hold the securities beyond the election of directors?***

A nominating shareholder or shareholder group should be required to meet the minimum ownership requirement (which should be at least 25%) so long as its director nominee serves on the board. This requirement will help mitigate the substantial risk that special interest groups will abuse the shareholder access mechanism to further their particular agendas rather than the company's long-term business goals. If nominating shareholders are required to maintain a significant ownership stake so long as their nominees serve on the board, they may be somewhat less inclined to nominate a director who will pursue a special-interest agenda at the expense of company performance and the other stockholders.

[5] ISS U.S. Proxy Voting Manual.

We sincerely appreciate your considering our comments to the proposed shareholder access rules. We will be happy to discuss our comments and concerns with you.

Sincerely yours,

FedEx Corporation

/s/ KENNETH R. MASTERSON

Kenneth R. Masterson
Executive Vice President,
General Counsel and Secretary

cc: Frederick W. Smith