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**OFFICE OF THE SECRETARY**



Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, Virginia 23510-2191  
Telephone (757) 629-2601  
Fax (757) 533-4954

**C.W. Moorman**  
Chairman, President and  
Chief Executive Officer

March 23, 2009

The Honorable Elizabeth M. Murphy  
Secretary  
U. S. Securities and Exchange Commission  
1001 F Street, NE  
Washington, DC 20549-1000

**SUBJECT: Proposed Rule Change to NYSE Rule 452, File No. SR-NYSE-2006-92**

Dear Secretary Murphy:

On behalf of Norfolk Southern Corporation, I am writing to comment on the proposal by the New York Stock Exchange ("NYSE") to amend NYSE Rule 452 to eliminate broker discretionary voting in the election of directors.

Broker discretionary voting is just one issue of many in the integrated and overly complicated proxy voting and shareholder communication system that requires attention. Thus, we believe that the Securities and Exchange Commission ("SEC") should not take action on the proposed changes to Rule 452 without, at the same time, conducting a thorough review of these other issues. We note that the Business Roundtable has been asking the SEC to re-examine the current proxy voting and communications system ever since it submitted a rulemaking petition to the SEC in April 2004, concerning shareholder communications. These issues also were the subject of a SEC Roundtable in May 2005, but no further action was taken until the recent abrupt publication of the proposed amendments to NYSE Rule 452.

Moreover, amending Rule 452 to eliminate broker discretionary voting in the uncontested election of directors could result in significant consequences to shareholders and issuers that we do not believe have been adequately addressed. For example:

- Eliminating broker discretionary voting in uncontested director elections runs the risk of disenfranchising shareholders as it may be counter to their assumptions about broker voting, as demonstrated by the survey appended to the NYSE rule filing.
- The proposed amendment would likely increase the cost of uncontested director elections by requiring issuers to substantially increase communications with their shareholders about the importance of voting in director elections. In this regard, the current shareholder communication rules which preclude direct communication between issuers and many of their shareholders, present a significant obstacle to efficient communication.

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- The interaction of the amendment to Rule 452 with a majority vote standard in uncontested director elections, which many companies have adopted, is likely to raise substantial questions.
- The voting recommendations of proxy advisory firms would have a far greater influence on the outcome of director elections.
- The loss of the broker discretionary vote in uncontested director elections could result in quorum problems at some companies.

For these reasons, Norfolk Southern Corporation urges the SEC to undertake a comprehensive review of the proxy voting and shareholder communication system and refrain from adopting piecemeal changes, such as the proposed amendments to Rule 452. Most significantly, the proposed amendment runs the risk of disenfranchising large numbers of individual shareholders. We urge the SEC to extend the comment period beyond March 27, 2009, in order to give interested parties an opportunity to comment, and to give itself sufficient time to address these important issues in a more comprehensive manner.

Sincerely,

A handwritten signature in black ink, appearing to read "C.W. Moore", with a horizontal line extending to the right.