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VIA EMAIL: rule-comments@sec.gov

Frances B. Jones
Executive Vice President
Secretary, General Counsel and
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Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: New York Stock Exchange Proposal to Amend Rule 452 Related to Discretionary Broker Voting for Director Elections (File No. SR-NYSE-2006-92)

Ladies and Gentlemen:

I am the Executive Vice President, General Counsel, Corporate Secretary and Chief Corporate Governance Officer of BB&T Corporation (the "Company") and I am writing to comment on the NYSE's proposed rule amendments that would eliminate broker discretionary voting for the election of directors (the "Amendment"). The Commission's release dated February 26, 2009 (Rel. No. 34-59464) cites the report of the NYSE's Proxy Working Group as support for the Amendment. One of the Working Group's key contentions, and one that I do not necessarily disagree with, is that the election of directors is an important event in the life of a corporation and arguably is the most important action a shareholder can take. While I appreciate the Working Group's thorough consideration of the issues surrounding broker discretionary voting in uncontested director elections, I believe that the Working Group and the NYSE underestimate the cost, uncertainty and disproportionate empowerment of special interest groups that would be caused by the adoption of the Amendment.

NYSE Rule 452 currently allows brokers to vote on certain "routine" proposals if the beneficial owner of the stock has not provided voting instructions to the broker at least 10 days before a scheduled meeting and the matter is not the subject of a "contest." At present, the NYSE generally deems as routine (i) a vote to approve the company's independent auditor and (ii) a vote on the election of directors in uncontested elections. The NYSE's proposed amendment would require that director elections no longer be considered "routine" and, accordingly, brokers would no longer be allowed to vote uninstructed shares in uncontested director elections.

As noted in the Commission's release and the Working Group's report, the current definition of "contests" in Rule 452 does not take into account "just vote no" campaigns and

other shareholder opposition efforts that do not rise to the level of an actual competing solicitation. Because brokers generally vote in favor of management proposals (including the director slate) the argument goes that broker discretionary voting undermines “just vote no” and similar campaigns, eroding shareholder democracy. Proponents of this argument also object to the fact that brokers are voting shares where they do not have an economic stake in the issuer.

I believe the unspoken concern driving the Amendment is that corporate boards and nominating committees will not heed the voice of the shareholders (the owners of the corporation), even in the face of a meaningful withhold or just vote no campaign. I do not believe that the elimination of broker discretionary voting in uncontested director elections is an appropriate regulatory approach to address this corporate governance concern. As evidenced by the Sarbanes-Oxley Act and the resulting regulations, the NYSE and the Commission are capable of directly addressing corporate governance issues. Indirectly addressing this concern in the way suggested by the Amendment will most likely fail to cure the underlying issue while causing broad negative results and potentially meaningful unintended consequences.

Given the fundamental concerns center on shareholder democracy and good corporate governance, I also am apprehensive of the impact that the Amendment would have when coupled with the current trend towards “majority voting” in director elections. In light of the lower voting rate for retail investors as compared to institutional investors, I believe that disallowing broker discretionary voting for director elections when coupled with “majority voting” for director elections would disproportionately empower activist institutional groups. In discussing the effect of the Amendment combined with a majority vote standard, the Working Group’s report states, “[s]uch a change may also increase the influence of special interest groups or others with a particular agenda to challenge an incumbent board, at the expense of smaller shareholders.”¹ This result is completely contrary to the Amendment’s goals of ensuring shareholder democracy and enhancing corporate governance.

As noted in the Working Group’s report, there are a number of alternatives to the elimination of broker discretionary voting in uncontested director elections including, for example, redefining what constitutes an “uncontested” election or adopting proportional voting for uninstructed shares. The Working Group appropriately notes shortfalls of each approach; however, I believe that either is preferable to the proposed Amendment.

I also am concerned that the next step to be taken is eliminating broker discretionary voting for the approval of independent auditors. The Working Group’s report specifically referenced that “there are a number of governance commentators who have noted that auditor ratification should not be a ‘routine’ matter in today’s environment, particularly given the role of

¹ See *Report and Recommendations of the Proxy Working Group to the New York Stock Exchange* at page 21 (June 5, 2006).

the auditor as ‘gatekeeper.’”² If independent auditor approval is no longer considered routine, broker votes may no longer be considered for the establishment of a quorum under state law. Previous comment letters have focused on the difficulty this will pose for “small and mid-cap” companies.³ I believe that the effect of this proposal will extend far beyond just small and mid-cap companies, and will impact all companies with a large base of “retail” shareholders.

For illustrative purposes, I would like to set forth the following facts about BB&T:

- As of the date of this letter, the Company has a market capitalization of approximately \$10.4 billion, placing us firmly into the common definition of a “large-cap” company;
- The Company’s shareholder base is comprised of approximately 59% retail investors and 41% institutional investors;
- Of the 59% of the Company’s shares held by retail investors, approximately 60% are held in street-name (or approximately 37% of the total outstanding number of shares);
- The Company’s total retail shareholder base historically has voted at a 30-35% rate; and
- The Company historically has had approximately 25% of the outstanding shares represented at the meeting as a result of discretionary broker voting on “routine” proposals.

Disregarding broker discretionary voting for uncontested director elections and for the approval of the independent auditors, the Company anticipates that in a typical year we would have approximately 50% of the shareholders represented at the annual meeting for purposes of establishing a quorum. Given this slim margin, the Company would be forced to hire a proxy solicitor to solicit sufficient votes to establish a quorum at each shareholder meeting, including those with only proposals that historically have been considered non-controversial. Engaging a proxy solicitor generates a considerable expense that is ultimately borne by our shareholders. In today’s difficult economic environment I believe that these expenses should not be taken lightly, even for large companies.

I urge the SEC to consider the cost to shareholders of a proxy solicitation process in the vast majority of director elections - where the election is truly not contested. Of the alternatives considered by the Working Group, I believe that a redefinition of what constitutes a “contested” election is the most efficient manner to address the real corporate governance concerns implied

² See *Report and Recommendations of the Proxy Working Group to the New York Stock Exchange* at page 9 (June 5, 2006).

³ See, for example, *Memorandum* of the American Business Conference dated October 26, 2006.

by the Amendment. That said, consideration also should be given to requiring proportional voting by brokers. The Commission also should consider the practical impact under state law of eliminating both the discretionary broker vote for director elections and auditor approval. If, under state law, the broker vote is not considered for the establishment of a quorum, then needless time and expense will be spent on a proxy solicitation process simply for the establishment of a quorum with - in the vast majority of circumstances - no offsetting "corporate governance" benefit to shareholders. This expense will be borne by companies across the capitalization spectrum and, in the aggregate, will be an enormous loss to investors.

Respectfully submitted,



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