

**FedEx Corporation**  
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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).

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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.

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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,  
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cc: Frederick W. Smith  
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