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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

SUBJECT: Proposed Proxy Access Rules

Dear Ms. Murphy:

This letter is submitted on behalf of CSX Corporation, one of the nation's leading transportation companies with more than $10 billion in annual revenues and approximately 33,000 employees. We appreciate the opportunity to respond to the request for comments made by the Securities and Exchange Commission (the "Commission") in its proposed proxy access rules ("Proposed Rules").

Although the recent crisis in the financial markets exposed a significant number of poor corporate governance practices, those practices do not appear to be representative of all industries. More importantly, there is no clear evidence that granting shareholders direct proxy access will improve boardroom performance. Moreover, the adoption of federally-mandated proxy access rules represents a significant change in corporate governance practices and will engage the SEC in an area traditionally governed by state law. In our view, governmental oversight of corporate governance and the relationship between boards and shareholders is the responsibility of a company's state of incorporation.

While we agree that shareholders should have meaningful input into the director selection process, we continue to believe that the form of proxy access should be decided by shareholders, and not by a federal mandate. Accordingly, the Company is writing in support of the adoption of the proposed changes to Rule 14a-8(i)(8), and in opposition to the adoption of proposed Rule 14a-11.

State Law Considerations

Prior to adopting any federal mandate, we encourage the Commission to consider recent state law developments to address shareholder proxy access. Most notably, Delaware has recently amended its corporate code to clarify that a corporation's bylaws can: (i) include provisions granting shareholders access to the corporation's proxy statement and proxy

forms for the purpose of nominating and promoting candidates for director; and (ii) provide for shareholder reimbursement of expenses in promoting candidates for director.[1]

Similarly, in June 2009, the ABA's Corporate Laws Committee approved clarifications to the Model Business Corporation Act (the "Model Act") confirming the legality of shareholder access bylaws as well as provisions for reimbursement of expenses incurred in promoting director candidates.[2] The Model Act is followed in approximately thirty states including Virginia, where CSX is incorporated. In Virginia, proxy access bylaws are currently permitted under the Virginia Stock Corporation Act and clarifying legislation similar to that adopted in Delaware is likely to be adopted in the first quarter of 2010.

The Case for Private Ordering

It is our view that state law developments such as those discussed above will provide shareholders and boards of directors with the ability to design proxy access procedures appropriately structured for their organization. In light of these and other recently adopted corporate governance practices, we believe it is appropriate to allow states to take the lead on proxy access at this time.

The Commission's proposed Rule 14a-11 will not facilitate shareholders rights, but rather impose a "one size fits all" federal mandate on all publicly traded companies. Contrary to the Commission's position that Rule 14a-11 is intended to remove impediments to shareholders exercising their rights under state law, we believe it will actually deprive them of their state rights to determine proxy access procedures.

It is our belief that adoption of Rule 14a-11, as proposed, will result in expensive, contentious and perpetual director election contests. The potential for annual election contests could encourage directors to focus on the achievement of short-term objectives over long-term strategic considerations. Having been involved in a high profile proxy contest in 2008, we are concerned that perpetual contests have the ability to distract management, result in boardroom disruptions and discourage directors from serving. Such an outcome could certainly have an adverse effect on corporate governance and long-term shareholder value. When combined with the recent amendments to New York Stock Exchange Rule 452, proxy access under Rule 14a-11 will likely result in unprecedented influence of unregulated proxy advisory firms on director elections and other governance matters.

Developing a well-rounded, engaged board with appropriate diversity, leadership experience and risk and financial expertise is an important and time-consuming process.

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[1] *See* Del. Gen. Corp. Law §§ 112, 113.
[2] *See* American Bar Association News Release, *Corporate Laws Committee Takes Steps to Provide for Shareholder Access to the Nomination Process* (June 29, 2009).

As such, it may not be in the best long-term interests of a corporation and its shareholders if the use of proxy access results in annual election contests. Changes in the director nomination process that may or may not lead to improved board performance should be taken cautiously as there is currently no objective basis to evaluate the potential consequences of a federally-mandated proxy access regime. It is not clear whether shareholders who utilize proxy access will be interested in long-term performance or event-driven short-term gains. It's imperative that the Commission recognize the possibility that proxy access, as the tool of a group of shareholders with its own agenda, might harm corporations and their other shareholders.

In order to provide shareholders with greater access to the director nomination process, the Company believes it would be prudent for the Commission to take an incremental approach by first amending Rule 14a-8(i)(8) to allow shareholders to submit proposals to amend, or request amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations. Considering the potential consequences of direct proxy access for shareholders, we believe this approach will allow shareholders to appropriately decide for themselves whether to adopt shareholder access and, if so, what form it takes.

Amending Rule 14a-8 at this time, while delaying action on proposed Rule 14a-11, would provide states, corporations and shareholders with the necessary opportunity to assess the impact of a variety of proxy access procedures. In this regard, it is important to keep in mind that not all shareholders who nominate directors pursuant to proxy access will act in a manner that is beneficial to all shareholders. For this reason, it's logical to first amend Rule 14a-8(i)(8) to allow shareholders and companies to decide on the appropriate form of access and gain a better understanding of how and by whom such access will be utilized.

Rule 14a-11

If the Commission decides to move forward with the adoption of Rule 14a-11, we request that it consider the modifications discussed below. These suggested modifications are designed to balance the benefits of allowing shareholders to participate in the director nomination process with the costs and disruptions to companies and their boards.

Opt-Out Provisions

Based on our belief that private ordering is the appropriate approach to proxy access at this time, we recommend that companies and shareholders be permitted to opt-out of proposed Rule 14a-11 by adopting a shareholder-approved proxy access process. It is our view that the final rule should not preempt the proxy access procedures established or authorized by state law or a company's governing documents. Accordingly, we suggest that if the Commission decides to adopt Rule 14a-11, the rule should first apply to companies that have not opted out of the federal proxy access model by adopting a

shareholder-approved proxy access procedure. Under this structure, shareholders could adopt a policy that is more or less restrictive than Rule 14a-11, or they could affirmatively determine that they do not want proxy access at all.

Ownership Thresholds

Based on the fact that direct proxy access will likely result in perpetual proxy contests, we believe the proposed 1% threshold for large accelerated filers and 3% threshold for accelerated filers is much too low. Accordingly, the Commission should set ownership thresholds at levels that require nominating shareholders or groups to hold a substantial economic interest in the company. We believe the appropriate ownership threshold should be 5% of a company' outstanding securities for individuals and groups. In our opinion, this 5% threshold strikes the appropriate balance between shareholder access and the costs, distractions and time commitments that accompany proxy contests. This threshold is also consistent with the disclosure requirements under Regulations 13D and 13G of the Securities Exchange Act of 1934.

Based on the prevalent use of derivate securities that effectively de-couple voting and economic interests, we believe that the ownership threshold should require the shareholder or group to demonstrate that they have full voting interest in the securities and hold a net long position for the required holding period, as discussed below.

Holding Period Requirements

We believe that proxy access should only be available to shareholders and shareholder groups that have a long-term investment horizon for the company. Otherwise, the proxy access process could be used to promote short-term gains and special interest agendas at the expense of the long-term interests of the company. As such, it is our position that nominating shareholders should be required to have beneficially held the shares used to determine eligibility for at least two years prior to the date of submission of the shareholder notice on Schedule 14N. Additionally, shareholders should be required to hold the amount of securities necessary to meet the applicable ownership thresholds through the date of the shareholders' meeting.

Resubmission Limitations

We believe that Proposed Rule 14a-11 should include resubmission limitations for nominating shareholders that have previously had a nominee included in a company's proxy materials where their nominee failed to receive a sufficient percentage of votes. In our view, a nominating shareholder whose director nominee fails to receive at least 25% of the shares voted, should be prohibited from submitting another nominee for a period of two years.

Number of Nominees

In our view, having shareholder nominated directors constituting up to 25% of a company's board, as proposed, could effectively allow a shareholder or group to exert a significant influence on control of the company and promote its own agenda, which may not be in the best interests of other shareholders. Accordingly, we recommend limiting the number of directors that can be nominated under Rule 14a-11 by a single shareholder or group to the greater of 10% of the number of directors or the percentage of shares held by the nominating shareholder or group up to the limits discussed below.

We agree with the Commission that a company should not be required to include in its proxy materials more shareholder nominees than could result in the total number of directors serving on the board that were elected as shareholder nominees being greater than 25% of the company's board of directors.

Director Nominee Qualifications

Without appropriate qualification standards in place, the Proposed Rules could weaken the independence and overall effectiveness of corporate boards. Thus, it is essential that Rule 14a-11 require that shareholder nominees meet the independence requirements of the relevant national securities exchange or association. Additionally, boards should be able to continue to pre-establish director qualifications to prevent the nomination and election of unqualified directors, which could weaken boards and adversely impact shareholder value. In this regard, we also urge the Commission to consider that with proxy access, shareholder nominees will be running against all incumbent directors increasing the risk that following the election, a board could be left without critical expertise, experience, diversity or a financial expert.

We also believe that transparency regarding the background and qualifications of shareholder nominees is imperative to enable other shareholders to make informed voting decisions. As such, the Commission should adopt proposed Rule 14a-19 to provide shareholders with adequate disclosures regarding shareholder nominees that are to be included in a company's proxy materials pursuant to state law or the company's governing documents.

Procedural Requirements

As proposed, Rule 14a-11 would require a company to include in its proxy materials nominees from the first nominating shareholder that provides timely notice of its intent to nominate a director. Under this approach to selecting director nominees, there is no connection between being "first-in" and the qualifications of the nominee(s). Accordingly, we believe that where there are more shareholder nominees than are available for nomination by shareholders, a company's nomination or governance committee should be able to select the most qualified candidates.

In conclusion, we believe that a federal proxy access mandate is unnecessary at this time It is our view that expanded shareholder proxy access should first be undertaken by amending Rule 14a-8(i)(8) to provide shareholders and boards of directors with the opportunity to develop company-specific approaches to proxy access. The adoption of Rule 14a-11 would, in our view, be costly, excessively disruptive and could discourage directors from serving on boards of public companies.

Thank you for considering CSX's views on this important subject. If you would like to discuss these comments, please do not hesitate to contact me.

Very truly yours,

Ellen M. Fitzsimmons
Senior Vice President – Law and Public Affairs,
General Counsel and Corporate Secretary