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**VIA EMAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

March 27, 2009

The Honorable Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

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

Dear Ms. Murphy:

This letter is submitted by Burlington Northern Santa Fe Corporation, which is engaged primarily in the freight rail transportation business through its subsidiary, BNSF Railway Company, which operates one of the largest North American rail networks, with about 32,000 route miles in 28 states and two Canadian provinces. We appreciate this opportunity to provide our views 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 one of six issues that were the subject of review by the NYSE's Proxy Working Group in its June 5, 2006, report. We believe that the proposal to amend Rule 452 should be considered only in conjunction with a review of all of the Proxy Working Group's recommendations, which includes review of the OBO-NOBO rule governing communications with stockholders and of the proxy voting and shareholder communications system. We note that the Business Roundtable asked the SEC to re-examine the current proxy voting and communications system, starting with its rulemaking petition to the SEC in April 2004 concerning shareholder communications, and we support its continuing efforts in that regard. Similar issues were the subject of an SEC Roundtable in May 2005, but no further action was taken until the present proposed amendments to NYSE Rule 452.

We believe that before amending Rule 452 to eliminate broker discretionary voting in the uncontested election of directors, the SEC should consider the broader issues and

consequences to shareholders and issuers that are not addressed in the proposal. In particular:

- 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. Given the longstanding practice of broker discretionary voting, shareholders may expect that if they do not vote on “routine” matters, their shares are likely to be voted in accordance with the board’s recommendation. Individual investors are already underrepresented in the current system, and the retail vote appears to be becoming further eroded with Notice & Access to which more and more companies are moving.
- The interaction of the amendment to Rule 452 with a majority vote By-Laws standard in uncontested director elections, which our company and many other companies have adopted, is likely to raise substantial questions.
- 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.
- The unavailability of the broker discretionary vote in uncontested director elections could also result in quorum problems at some companies.

We, therefore, urge the SEC to undertake a comprehensive review of the proxy voting and shareholder communication system and not adopt the proposed amendments to Rule 452 without undertaking a review of the entire proxy voting process. We ask that the SEC extend the comment period beyond March 27, 2009, in order to give interested parties and the Commission sufficient time to analyze and understand these issues.

Thank you for considering our views on this issue.

Sincerely,

A handwritten signature in black ink that reads "Matthew K. Rose". The signature is written in a cursive, slightly slanted style.

Matthew K. Rose