

Via Email rule-comments@sec.gov

September 2, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: Reporting Threshold for Institutional Investment Managers, Release No. 34-89290;
File No. S7-08-20**

Dear Ms. Countryman:

NOVAGOLD RESOURCES INC. (“NOVAGOLD,” “we” or the “Company”) strongly opposes this proposed amendment to increase the reporting threshold of 13F investor filers and we agree with the U.S. Securities and Exchange Commission (the “SEC”) “Statement on the Proposal to Substantially Reduce 13F Reporting” dated July 10, 2020 authored by Commissioner Allison Heren Lee that this proposal will drastically reduce the number of 13F filers, will reduce public access to market information, and will constrain financial transparency. The SEC’s mission statement is to protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation, and this proposal runs counter to those aims. Under this new proposal, the 5,293 institutions who filed 13Fs in the first quarter of 2020 would decrease to 549 and would severely limit the ability for public companies to regularly engage with and know their shareholder base, which could damage relationships across the investment community. There is no reason why an investment fund with \$1 billion in assets under management cannot comply with existing regulations to report their holdings every quarter, or even every month.

I am writing to express opposition on behalf of NOVAGOLD to the SEC’s proposed amendments to the Form 13F reporting rules for institutional investment managers. NOVAGOLD trades on the NYSE American Exchange and Toronto Stock Exchange, under the symbol NG, with a current market cap of \$3.1 billion. We are a mining exploration company pursuing the development of one of the largest and highest grade undeveloped known open pit gold endowments in the world, the Donlin Gold project in Alaska, which we own 50/50 with our partner Barrick Gold, the second-largest gold producer globally and also a listed issuer on those two stock exchanges.

We believe that the SEC’s proposal, which would allow 89 percent of current 13F filers to go dark, would result in a significant loss of market transparency to our Company and other publicly traded companies in the United States. The proposed rule, if enacted, would impair engagement with shareholders, impede our ability to attract new long-term investors, and deprive us of

timely information about activist hedge funds and other activist investors. Less transparency will breed distrust in the U.S. financial markets and damage the credibility of the investment community.

The 13F filings are the only accurate source of ownership information available to our Company and other U.S. issuers. While 13F data is not reported as frequently as it should be, it is the only data that we have that shows which “street name” investors are buying or selling our shares each quarter. This information cannot be replaced by hiring stock surveillance firms, which themselves rely on quarterly 13F data as a starting point for their research efforts. For companies of our size, stock surveillance services are cost prohibitive.

We do not believe that the SEC has adequately considered the potential impact of this 13F proposal to our Company and our obligation to regularly confer with our investors throughout the year. As a small-to-mid cap company, we are particularly concerned about how the reduction of 13F transparency would impair our ability to identify our most active shareholders and engage effectively with them. We estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow 117 or 40.6% of our current 13F filers to avoid disclosure. This includes four significant current top shareholders such as Paulson & Co. Inc. (currently NOVAGOLD’s third-largest shareholder); EXOR Investments (UK) LLP (currently our eighth-largest shareholder); Sprott Asset Management LP (our ninth-largest shareholder); and Kopernik Global Investors, LLC (one of our top 20 shareholders). While some of our largest investors would continue to disclose shares held, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our Company and many others, it is the 13F data from the active investment managers and hedge funds that fall below the proposed \$3.5 billion threshold that is most valuable, especially for gold specific investors.¹

Reduced Engagement Due to Lack of Transparency

NOVAGOLD uses 13F data to allocate the limited time of our senior executives and directors among the many requests that we receive from investors for one-on-one calls or meetings. We cannot possibly say yes to every investor request to speak with our senior management, so we try to give priority to not only our largest investors and fund managers with a track record of activism but also those shareholders with smaller positions who are interested in increasing their holdings in our Company. As a special situations’ investment, our Company appeals to a broad array of funds that would fall under the proposed \$3.5 billion threshold. With this proposed increase in the 13F threshold, we would not have visibility into the activity of these important groups of investors.

Should this proposed rule come into effect, another challenge the Company would encounter is effectively allocating management’s time based on shareholder positions. For example, if a fund

¹ According to Edelman’s financial communications practice group, 60 percent of activist asset managers would fall under the \$3.5 billion threshold. See Jeremy Cohen and Jeff Zilka, Edelman, “SEC Proposed Rule Change Is A Step Backwards for Shareholder Democracy,” July 29, 2020, available at: <https://finance.yahoo.com/news/sec-proposed-rule-change-step-193708183.html>.

managed less than the reporting threshold, but wanted to meet with us to get information on our joint venture partner, Barrick Gold, the fund representatives could falsely claim they own a significant position and the Company would be unable to verify the position.

Negative Impact on Capital Formation

The loss of 13F data under the proposed change would impede our Company's ability to attract new long-term institutional investors. Like many issuers, we use 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of our outreach efforts to prospective investors. Both practices are essential for our Company to effectively access the capital markets and to grow our business. Under the proposed threshold, the loss of transparency around who is holding as well as buying our shares each quarter – and those of similar companies – would hinder the ability of our Company to continue to compete for and raise capital. We ask that the SEC carefully consider the impact on capital formation before proceeding with this rulemaking as it seems it runs counter to the SEC's mission.

Increased Risk of Activism

The SEC's proposal to significantly reduce 13F disclosures is also at odds with recent requests by the SEC that we and other public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global COVID-19 pandemic.² Just as there is a need for greater transparency on our part to our investors, our need for ownership data is even greater during these uncertain times, when market volatility is high and many activist investors have taken advantage of share price declines to amass larger stakes in potential target companies. Under the proposed \$3.5 billion minimum threshold, we would be unable to monitor those activist investors who would be exempt from reporting their positions, thus "gaming the system" and using the increased lack of transparency for their benefit and not that of our Company's long-term shareholders or the communities in which we operate.

The loss of 13F data under the proposed rule potentially exposes our Company to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that we eliminate jobs, reduce project development funding, increase share buybacks, or take other measures that may not be part of the Company's long-term strategy or the investment strategy of our long-term investors. According to Activist Insight, 2019 was a record year for activism as 470 U.S. companies

² As Chairman Jay Clayton and Corporation Finance Director William Hinman observed, "The SEC's three-part mission -- maintain market integrity, facilitate capital formation, and protect investors -- takes on particular importance in times of economic uncertainty. Disclosure — providing the public with the information necessary to make informed investment decisions — is fundamental to furthering each aspect of our mission. . . . We urge companies to provide as much information as is practicable regarding their current financial and operating status, as well as their future operational and financial planning." Chairman Jay Clayton and William Hinman, Director, Division of Corporation Finance, "The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19," April 8, 2020.

were targeted and 95 proxy contests were launched.³ Many corporate advisers are warning companies to prepare for another surge in activism in 2021-22 after the COVID-19 pandemic hopefully subsides (just as occurred after the financial crisis of 2008-09), therefore, the timing of the SEC's proposed reduction of 13F transparency would be especially unfortunate for companies and long-term investors.⁴

Without the 13F data we receive now, our Company will not know if an activist fund manager that falls under the \$3.5 billion threshold is plotting a proxy contest until 10 days after the fund crosses the 13D disclosure threshold and publicly surfaces with a 5 percent (or often greater) position. As a Company that was targeted in a short-and-distort attack that began in May 2020, and subsequently evaporated nearly \$1 billion in market capitalization in the month that followed, NOVAGOLD urges the SEC to expand 13F disclosure to include reporting of short positions, as requested by rulemakings filed by the National Investor Relations Institute (NIRI), NYSE, and Nasdaq in the past. We believe that the reporting of short positions could have prevented the financial destruction experienced by all of NOVAGOLD's shareholders as a result of the short-and-distort attack.

While we agree that the SEC should modernize its ownership disclosure rules, we believe that the negative impacts of this 13F proposal on our Company's ability to engage effectively with our shareholders, attract new long-term investors, and detect potential activists would far outweigh the modest cost savings for investment managers. The proposed 35-fold increase in the 13F threshold is not consistent with the incremental approach the SEC has taken when adjusting economic thresholds in other rules, such as the Commission's inflation-based increase in the gross revenue cap for emerging growth companies,⁵ the adjustments to the transition thresholds

³ See Lisa Silverman, Bloomberg Law, "Insight: Preparing for Post-Pandemic Corporate Activism," May 4, 2020, available at: <https://news.bloomberglaw.com/corporate-governance/insight-preparing-for-post-pandemic-corporate-activism>.

⁴ See, e.g., Q4 Blog, "Activism in the Post-Pandemic Market: What You Need to Know," May 12, 2020, available at: <https://q4blog.com/2020/05/12/activism-in-the-post-pandemic-market-what-you-need-to-know/>; Frank Aquila and Melissa Sawyer, Sullivan & Cromwell, *Corporate Secretary*, "How boards can prepare for post-pandemic activism," April 6, 2020; available at: <https://www.corporatesecretary.com/articles/boardroom/32040/how-boards-can-prepare-post-pandemic-activism>.

⁵ Inflation Adjustments and Other Technical Amendments Under Titles I and II of the JOBS Act, Release Nos. 33-10332; 34-80355; File No. S7-09-16 (March 31, 2017).

for companies that exit accelerated filer status and large accelerated filer status,⁶ and the proposed updates to SEC's rules on shareholder resolutions.⁷

For the foregoing reasons, we request that the SEC withdraw its proposed 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by NIRI, the NYSE Group, the Society for Corporate Governance, and Nasdaq.⁸ Rather than reduce 13F transparency, we urge the SEC to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and reducing the time to report positions from 45-days to [30] days.

Sincerely,



Gregory A. Lang
President & CEO
NOVAGOLD RESOURCES INC.



Sharon Dowdall
Chair, Corporate Governance & Nominations Committee
NOVAGOLD RESOURCES INC.

⁶ Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 2020) (the SEC increased the threshold for exiting accelerated filer status by 20 percent from \$50 million to \$60 million, while the threshold for exiting large accelerated filer status increased by 12 percent from \$500 million to \$560 million).

⁷ Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, File No: S7-23-19 (Nov. 5, 2019) (The Commission proposed to increase the minimum holding requirement for shareholder resolutions from \$2,000 to \$25,000, but would mitigate the impact of that change on small investors by allowing them to use the \$2,000 threshold if they continuously hold a company's shares for at least three years.)

⁸ See NYSE Group, NIRI, and Society for Corporate Governance, Request for Rulemaking Concerning Amendment of Beneficial Ownership Reporting Rules Under Section 13(f) of the Securities Exchange Act of 1934 in Order to Shorten the Reporting Deadline under Paragraph (a)(1) of Rule 13f-1, Petition No. 4-659, February 4, 2013, available at: <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>; NYSE Group and NIRI, Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934, Petition No. 4-689, October 7, 2015, available at: <https://www.sec.gov/rules/petitions/2015/petn4-689.pdf>; and Nasdaq, Petition for Rulemaking to Require Disclosure of Short Positions in Parity with Required Disclosure of Long Positions, Petition No. 4-691, December 7, 2015, available at <https://www.sec.gov/rules/petitions/2015/petn4-691.pdf>.