BorgWarner Inc. | 3850 Hamlin Road | Auburn Hills Michigan 48326 | Telephone 248 754 9200 Fax 248 754 9600

BorgWarner

August 18, 2009

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Attention: Elizabeth M. Murphy, Secretary
Via e-mail: rule-comments@sec.gov

Re: File No. S7-10-09 (Facilitating Stockholder Director Nominations)

Dear Ms. Murphy:

BorgWarner Inc., a Delaware Corporation, is a product leader in the design and manufacture of highly engineered components and systems for vehicle powertrain applications, with sales of approximately $5.3 billion in 2008. We operate manufacturing and technical facilities in 60 locations in 18 countries. Our stock is publically traded on the New York Stock Exchange. Our market capitalization is approximately $3.9 billion. BorgWarner appreciates the opportunity to respond to the Securities and Exchange Commission's (the "Commission") request for comments on its proposed rule, "Facilitating Stockholder Director Nominations" (the "Proposed Rules").

We support, and believe we have implemented, good corporate governance practices, including the right of stockholders to have an effective vote in the election process and the ability to recommend persons for nomination to the board of directors. We request the Commission consider modifications to the Proposed Rules to make the Proposed Rules work in a more efficient and effective manner and better balance the potential cost and disruption to companies and all of our stockholders.

I. Eligibility to Use Rule 14a-11. The Proposed Rules provide that stockholders who own 1% of a large accelerated filer for one year may nominate a director through the use of the company's proxy statement. We believe the threshold is too low and propose that 5% would be a more appropriate threshold.

A. Ownership Threshold. Stockholder proposals, of all types, have a financial impact on all stockholders, as they require substantial attention and resources of a company, including its in-house legal and investor relations staff, outside securities and state-law counsel, senior management, and the board of directors. We believe the Commission should set the minimum threshold at a level that ensures that the nominating stockholder or group (hereinafter, referred to as the "nominating stockholder") has a substantial economic interest in the company.

(i) We believe that the appropriate threshold should be the beneficial ownership of 5% of the company's securities that are entitled to be voted on the election of directors at a meeting of stockholders for single nominating stockholders, and should be 10% where a group of stockholders is nominating the director. The 5% and 10% thresholds are intended to be responsive to the Commission's concerns of ensuring the thresholds are not so high as to impose undue impediments to proxy access, while being sensitive to the real costs that such proposals impose on the company and its stockholders. In the United Kingdom, stockholders must own at least 5% of the company's securities (or be part of a group of at least 100 stockholders) in order to submit a nominee for inclusion in the company's proxy statement. The proposed 1% threshold for large accelerated issuers is simply too low. The Commission noted that nearly all large and accelerated filers have two or more stockholders that meet that threshold. BorgWarner has 36. Given that aggregation of shareholdings is permitted under the Proposed Rules, thresholds at the 1% or 3% level would mean we could be facing nominations from multiple stockholders. Our very small proxy preparation staff of 3 is likely to be overwhelmed. Adding staff in our industry (automotive supply) in these difficult economic times would ultimately not serve the interests of our stockholders.

(ii) With regard to aggregation of shareholding, we believe a stockholder should be permitted to be a member of only one "group"; a stockholder should not be permitted to be part of multiple groups who are nominating different nominees. In the absence of such a prohibition, stockholders could form multiple groups, claiming that so long as the groups were not precisely identical, each group was a different proponent. This would undermine the system, and make it impossible for us to monitor the various groups that could be formed. We believe the proposed modification would prevent abuse of the Proposed Rules and is consistent with the basic and fundamental construct of Rule 14-8(c) that a stockholder may submit no more than one proposal to a company for a particular stockholders' meeting.

B. Holding Period Requirements.

(i) We do not view stockholders who have held their shares for only one year as long-term stockholders. We believe that the nominating stockholder should be required to have beneficially owned the securities that are

used for purposes of determining the ownership threshold for at least two years as of the date of the stockholder notice on Schedule 14N. In the case of a nominating group, each member of the group should have held the securities for at least two years as of the date of the Schedule 14N.

(ii) We believe that the Commission should refine the Proposed Rule so that stockholders are required to have a net long position during the entire two-year holding period for the purpose of submitting a nominee. The nominating stockholder should be required to produce evidence from its broker-dealer or custodian that this net long position has been met. Given the possibility of de-coupling economic interests from voting rights, additional disclosure should be required from the nominating stockholder regarding any arrangements that affect such nominating stockholder's voting or economic rights so that other stockholders can obtain a clear and accurate understanding of the nominating stockholder's interest in the company.

(iii) We agree that the nominating stockholder should continue to hold the amount of securities necessary to meet the ownership thresholds through the date of the stockholders' meeting. We believe that the nominating stockholders, if requested by the company, should be required to produce evidence from their broker-dealer or custodian certifying that their net-long holdings meet the requirement through the date that is within 5 days of the meeting to ensure their continued eligibility to nominate a director. If any nominating stockholder does not remain eligible, such nominating stockholder's nominee should be withdrawn from consideration for election at the stockholders' meeting to ensure that the nominating stockholder has the appropriate commitment to the nominee and the election process.

C. Resubmission Threshold. We believe that proposed Rule 14a-11 should include a "resubmission threshold". If the nominating stockholder's nominee fails to receive 25% of the vote at the meeting at which his nomination is voted upon, the nominating stockholder (and, if applicable, all of the members of the nominating group) should be prohibited from submitting another nominee for a period of two years. This is appropriate, as that nominating stockholder has not demonstrated it received sufficient support to elect its nominee to the board and thereby justify continued use of the company's proxy statement. In addition, the nominee should not be eligible for nomination for a similar two-year period because it would be inappropriate to require the company to again expend the significant resources involved in including the nominee in its proxy statement where the nominee did not garner sufficient support from the stockholders of the company, and this would provide an opportunity for other stockholders to submit nominations for consideration.

D. Certification that Nominating Stockholder is not seeking to Change Control of the Company. We agree with the Commission that only stockholders who are not intending to seek control of the company should be eligible to use

Rule 14a-11. To ensure the Proposed Rules are used as intended by the Commission, additional objective safeguards are needed, as follows:

(i) Each nominating stockholder should only be permitted to nominate one director, rather than up to 25% of the board of directors as proposed. While we agree and support the Commission's effort to facilitate the nomination and election of stockholder nominees for director, we believe that is very different than being permitted to nominate a "bloc" of directors through the company's proxy statement. Most contests for control of a company do not involve a change in the majority of the membership of a board of directors. Dissident stockholders often seek to influence a change of control by the nomination of "short slates", which are a "bloc" of directors consisting of less than a majority of the board membership. Therefore, we believe that stockholders who intend to nominate a bloc of directors should be required to conduct a traditional proxy contest pursuant to Regulation 14A or a short slate proxy contest using Rule 14a-4(d) (known as the "short slate rule"). We also believe that by limiting each nominating stockholder to one nominee, it is more likely that multiple nominating stockholders may be given the opportunity to nominate members for election to the board of directors.

(ii) We believe that having stockholder-nominated directors constituting 25% of the board of a company is too high a percentage. Having as many as up to 25% of the directors of the board nominated by persons who may not share the board's overall philosophy or approach with respect to the management of the company may also result in a less cohesive board – a result that is not in the interests of all stockholders generally. We propose that the maximum number of directors nominated by stockholders constitute no more than 15% of a board.

(iii) Stockholders should not be permitted to nominate directors pursuant to proposed Rule 14a-11 if a company becomes subject to either a traditional proxy contest or a short slate proxy contest in that same year. To permit otherwise would mean that proposed Rule 14a-11 could have the effect of changing control of the company. When a company is facing stockholder-nominated directors from multiple sources, the combination of stockholder nominations (including those nominated pursuant to Rule 14a-11) could result in a change of a majority of the company's board of directors. At any time a company's board receives notice that an insurgent is planning to wage a proxy contest, the company should be permitted to drop any candidates from the company's proxy materials that have been nominated under proposed Rule 14a-11.

II. Single Mandated Procedure is Inappropriate. We are willing to discuss corporate governance issues, including potential nominees for director, with our stockholders as most companies are. We also have procedures in place for

stockholders to submit recommendations for director nominations. We believe that a single mandated procedure for nominating persons for the board of directors is not appropriate for all public companies; consideration of individual facts and circumstances of the company must be taken into account. For this reason, companies and stockholders should be able to determine the stockholder proxy access procedure that works best for them. This "private ordering" by companies and stockholders has worked well in other situations, such as majority voting in the election of directors.

III. Nominee Requirements.

A. The Nominee Must Meet Applicable Regulations and Director Guidelines. The Proposed Rule requires a representation that, to the knowledge of the nominating stockholder, the nominee meets the objective criteria for independence set forth in the rules of the relevant national securities exchange or national securities association. However, most state laws permit companies to establish qualifications for directors that go beyond the objective criteria of the securities exchange or association. We believe that nondiscriminatory director qualifications set forth in a company's governing documents are valid as a matter of state law with respect to all directors. Such eligibility standards should be applicable to stockholder nominees.

We also believe that the stockholder nominee, once elected to the board, should be required to comply with our non-discriminatory board service guidelines, such as agreement to resign if less than a majority of votes cast is received when the director next stands for election, mandatory retirement age, share ownership requirements and the maximum number of other boards on which the nominee may serve. Once elected to the board, a stockholder-nominated director has the same fiduciary obligations to the company's stockholders as any other director. There is no basis for there being any distinction among directors with respect to valid, non-discriminatory director qualifications.

B. The Nominee Must be Independent of the Nominating Stockholder. It is very important that proposed Rule 14a-11 provide that the nominee be independent of the nominating stockholder. Specifically, we recommend that proposed Rule 14a-11 provide that the nominee may not be (i) a nominating stockholder, (ii) a member of the immediate family of any nominating stockholder, or (iii) any employee of a nominating stockholder. There are several reasons that such limitation is appropriate.

- By ensuring that the nominee is independent of the nominating stockholder, it is less likely that Rule 14a-11 will be used by those stockholders who are seeking to control the company.
- The independence requirement will make it more likely that the stockholder nominee will discharge director's fiduciary duties to all

stockholders, and not be unduly obligated to represent the interests of the nominating stockholder.

- It will help ensure the confidentiality of board meetings and that such information is not inappropriately shared with the nominating stockholder.
- An independent nominee will be more easily integrated into the board, helping ensure board unity and cohesiveness. We believe the requirement that the nominee be independent of the nominating stockholder will not impose an undue burden on the nominating stockholder and will help ensure the proper functioning of the board.

C. Need for Nominee to Complete Our Standard Directors' and Officers' Questionnaire. The time constraints imposed by the Proposed Rule make it nearly impossible for a stockholder nominee to be duly vetted by our Corporate Governance Committee prior to inclusion in our proxy statement. We request that the Commission provide in the final rule that the board and nominating committee have no duty to vet the stockholder nominee. Because it is important for a stockholder nominee to meet the company's director qualification requirements, we believe that stockholder nominees should be required, at the request of the company, to complete our standard "director and officer questionnaire" prior to the printing and mailing of the proxy statement. The questionnaire provides the company with information to help determine if the nominee is independent based upon stock exchange rules and the company's own corporate governance guidelines, which is why we collect information each year from current directors. This would not impose upon the stockholder nominee any obligations that are not imposed on the company's own-nominees. If, based on the information provided in the questionnaire, it appeared the nominee did not meet the applicable stock exchange's independence standards or our own corporate governance guidelines, we believe it would be important, and appropriate, for the company to notify stockholders of that fact in the proxy statement.

D. Nominees that Count Against the Stockholder "Cap".

(i) Under proposed Rule 14a-11, a nominating stockholder is required to represent that no relationships or agreements exist between the nominee and the company and its management, and between the nominating stockholder and the company and its management. If any such agreement exists, the nominee would not count toward the maximum number of nominees that could be nominated pursuant to proposed Rule 14a-11 (the "stockholder cap"). We believe if, at any time prior to the stockholders' meeting, the board decides to endorse the stockholder's nominee, the nominee should continue to be treated as a stockholder nominee for purposes of determining the maximum number of stockholder nominees to be included in the company's proxy materials for that year. This will help facilitate discussions between boards and nominating stockholders, as a board may be more likely to come to an accommodation

concerning a nominating stockholder's nominee knowing that, if it were to do so, it would not need to then begin the process of negotiating all over with yet another nominating stockholder because the "endorsed" nominee will not count towards the stockholder cap. If the Rule is adopted as currently proposed, we believe it is likely to have a chilling effect on desirable negotiations between stockholders and boards or nominating committees regarding stockholder nominees.

(ii) The Proposed Rule does not address the situation where management includes in its slate a director who was elected as a stockholder nominee at the previous meeting. We believe that, as drafted, the Proposed Rule may discourage the nominating committee or board from re-nominating the director in order to avoid that person becoming a "management" director and thereby allow another nominee to be put forth by stockholders under proposed Rule 14a-11. Proposed Rule 14a-11 should be revised to provide that any company nominee that was initially elected as a stockholder nominee shall reduce the number of nominees that may be nominated pursuant to Rule 14a-11(d)(1) for a period of three years. After three years, the director would not reduce the number of nominees that may be nominated pursuant to Rule 14a-11(d)(1).

IV. Notice, Disclosure and Procedural Requirements.

A. Window Period Needed; Largest Stockholders Should Get Priority. Pursuant to proposed Rule 14a-11, the nominating stockholder that first provides notice to the company will be permitted to include its nominee in the company's proxy materials. However, as proposed Rule 14a-11 does not specify the earliest date that a nominating stockholder can file a notice on Schedule 14N, we believe that, as proposed, Rule 14a-11 could have the unintended consequence of resulting in a race by stockholders to be the first to provide their notice to the company. This could discourage potential nominating stockholders from engaging in constructive dialogue with the board in an effort to achieve its objectives without a proxy access election contest. We could be in the burdensome position of having to address stockholder nominations throughout the year. We recommend that the Commission, in its final rules, provide for a specific window within which nominating stockholders can make a nomination pursuant to the proposed Rule 14a-11.

Where there is more than one eligible nominating stockholder, the nominating stockholder with the largest holdings should be entitled to include its nominee in the company's proxy materials. This approach would ensure that those stockholders with the greatest economic interest in the company would have the right to have their nominee included in the company's proxy materials. The interests of such stockholders are more likely to be aligned with the interests of the other stockholders. If there is a window period, companies will have a date certain by which all nominations must be received, and will at the end of the

window period be able to determine which nominating stockholders have the largest stock holdings.

B. Excluding a Stockholder Director Nominee that Does Not Comply with the Requirements of Rule 14a-11.

(i) In contrast to proposed Rule 14a-11, the deadline for submitting a Rule 14a-8 proposal is 120 calendar days before the date the company's proxy statement was released to stockholders in connection with the previous year's annual meeting. Therefore, in order to ensure that there is sufficient time to comply with the procedures for excluding a stockholder director nominee that does not comply with the requirements of proposed Rule 14a-11, we recommend that the Commission, in its final rules, provide that the deadline for submitting a nominee pursuant to proposed Rule 14a-11 be the same as the deadline for submitting a proposal pursuant to Rule 14a-8(d).

(ii) If a stockholder nominee is excluded pursuant to proposed Rule 14a-11, we believe the company should not be required to include a substitute proxy access nominee in its proxy statement, as the company would not have sufficient time to seek to exclude such new nominee if such new nominee fails to meet the requirements set forth in proposed Rule 14a-11. If a disqualifying event occurs after the company's proxy material has been disseminated, the company should be able to issue supplemental proxy material and new proxy cards that remove the disqualified nominee, and the company should be entitled to disregard any votes cast for the disqualified nominee.

C. Additional Required Disclosures. We support the Commission's efforts to provide transparency and facilitate stockholders' ability to make informed decisions on stockholder nominees. While we appreciate that the currently proposed Schedule 14N is intended to provide disclosures regarding the nominating stockholder and the nominee, we believe additional information is important and material to stockholders in making a determination as to whether to vote for a stockholder-nominee. We recommend that the following additional disclosures be required in Schedule 14N:

- a description of (1) any material transaction between the stockholder and the company or any of its affiliates within the 12 months prior to the filing of the Schedule 14N, and (2) any discussion regarding the nomination between the stockholder and a proxy advisory firm;
- any holdings of more than 5% of the securities of any competitor of the company (i.e., any enterprise with the same SIC code);
- any meetings or contacts, including direct or indirect communication by the stockholder, with the management or directors of the company that occurred during the 12-month period, other than with respect to the proposed nomination;
- the items required by Item 4 of Schedule 13D regarding the purpose or

purposes of the nomination [1];

- a description of any contracts, arrangements, understandings or relationships (legal or otherwise) between the nominating stockholder or group and any person with respect to any securities of the company, regarding such nominating stockholder's or group's economic rights with respect to the company's securities, including without limitation, hedging transactions; and
- the same information that a company would be required to disclose in its proxy statement regarding its nominees for director pursuant to the Commission's proposed rule entitled "Proxy Disclosure and Solicitation Enhancements" (Proposing Release No. 33-9052, dated July 10, 2009).

We believe these additional disclosures are needed from all nominating stockholders, even were the Commission to amend proposed Rule 14a-8 to provide that eligibility for use of the Rule is increased to a 5% ownership threshold (as we suggest), since, if nominating stockholders or groups are permitted to file a Schedule 13G (as is currently the case under the Proposed Rule), rather than a Schedule 13D, this necessary and appropriate information will otherwise not be obtained from nominating stockholders.

D. Universal Proxy Card. We are concerned that there is a significant possibility of stockholder confusion in any election in which a stockholder nominee is included in the company's proxy materials. We also believe that stockholders may be confused by the use of a universal ballot, which will contain the names of both the company's nominees and stockholder's nominees. For instance, stockholders, relying on common practice, may execute a blank proxy card without checking the boxes for any of the nominees, which we believe would now result in an invalid proxy card. This could have the unintended consequence of a company failing to obtain a quorum for the stockholders' meeting or perhaps

[1] The items to be disclosed are a description of any plans or proposals which the nominating stockholder or group may have which relate to or would result in: (i) the acquisition by any person of additional securities of the company, or the disposition of securities of the company; (ii) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the company or any of its subsidiaries; (iii) a sale or transfer of a material amount of assets of the company or any of its subsidiaries; (iv) other than as a result of the election of the nominating stockholder's or group's nominee, any change in the present board of directors or management of the company, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board; (v) any material change in the present capitalization or dividend policy of the company; (vi) any other material change in the company's business or corporate structure, including but not limited to, if the company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by Section 13 of the Investment Company Act of 1940; (vii) changes in the company's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the company by any person; (viii) causing a class of securities of the company to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; (ix) a class of equity securities of the company becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Securities Exchange Act of 1934; or (x) any action similar to any of those enumerated above.

disenfranchising these stockholders. Also, certain stockholders may mistakenly check all boxes, including the boxes for both the company's nominees and the stockholder's nominees, with uncertain results. Finally, stockholders may not check boxes equating to a full slate of nominees.

To address any confusion that would result from the use of a universal proxy card, we recommend requiring a clear delineation in the proxy statement and in the proxy card of the management slate and the stockholder nominees. In addition, there should be included on the face of the proxy card in bold letters the following statement: "In order to vote for a stockholder nominee, you must check the box for that nominee and strike a candidate from the management slate." We believe that this disclosure will minimize the risk that a stockholder will either vote for all nominees - thus rendering the proxy invalid - or vote for only a partial slate - which will partially disenfranchise the stockholder with respect to such stockholder's vote on the full slate of directors.

We also recommend that the Commission permit the proxy to be voted in essentially the same manner that stockholders are used to voting today. The Proposed Rule would prohibit the grant of authority to vote for the company's nominees as a group on a proxy card if the proxy card includes a stockholder's nominee, and we are concerned that this will further complicate the proxy voting process. Our Corporate Governance Committee and Board put considerable effort into selecting the company's complete slate of nominees, taking into account the expertise, experience and independence of the board as a whole. Stockholders should be permitted to continue to vote for our nominees as a group, if they so desire. We recommend that the Commission provide that any proxy that includes stockholder nominees that is voted in blank (that is, without checking the boxes for the nominees) continue to be deemed to be a vote for the entire board-nominated slate.

In order to further minimize confusion, the final rule should prescribe only those changes to the instructions to the proxy card that are necessary to give effect to the proxy access procedure. This will also assist custodians and voting intermediary systems in adapting to the Proposed Rule. The more stockholders can rely on what has become customary, the lower the risk that a considerable number of invalid proxies will be returned in an election to which the proposed proxy access procedure applies.

E. Liability of the Company. The Proposed Rule indicates that the company would have liability if it "knows or has reason to know that the information concerning a stockholder nominee is false or misleading." We believe that this is inappropriate, as we will not have sufficient time to investigate the statements made by the nominating stockholder or group and the nominee, and will not necessarily have the means to determine whether the statements are false or misleading. Furthermore, even if the company had reason to believe – for example, based on information received in the questionnaire – that the

information provided by the nominating stockholder or group or the nominee is false or misleading, the company does not have the right to exclude the information from the proxy statement.

Pursuant to existing Rule 14a-8(l), a company is not responsible for stockholder proposals or supporting statements. We also note that the Commission's 2003 proxy access proposal provided that the company had no liability for the statements of the nominating stockholder or group. The purpose of proposed Rule 14a-11 is to provide "access" – a means by which stockholders may use the company's proxy materials to facilitate their nomination of directors. This purpose is not undermined by providing that the company has no liability for the nominating stockholder's statements that the company is required to include in its proxy materials. The "knows or has reason to know" language contained in proposed Rule 14a-11(e) and 14a-19 suggests that companies have some duty to investigate or otherwise confirm the accuracy of the information provided by the nominating stockholder or group. This represents an inappropriate shifting of liability to companies for statements made by nominating stockholders or their nominees which is manifestly unfair. We do not believe there is a compelling reason why a company should have any liability for a nominating stockholder's statements in connection with their nominee.

The Company should be entitled to explicitly state in the proxy that "the company has done no investigation of, and takes no responsibility for, the accuracy or completeness of the information supplied to it by the nominating stockholder or group or the nominee for director."

V. Proposed Amendments to Rule 14a-8(i)(8). We support the adoption of the proposed amendments to Rule 14a-8(i)(8) that would permit stockholders to make proposals regarding the election of directors. We believe that the use of amended Rule 14a-8(i)(8) to allow stockholders to propose and adopt guidelines for access to the company's proxy materials is an appropriate way for companies and their stockholders to determine a proxy access procedure that is tailored for the particular circumstances of the company.

A. Private Ordering/Conflict with Proposed Rule 14a-11. Stockholders should have the full range of options available to them regarding the nature of proxy access at their companies, and, as such, the requirement to include proposals under the proposed amendments to Rule 14a-8(i)(8) should not be limited only to those proposals that would not conflict with Proposed Rule 14a-11. Stockholders should be permitted to suggest the level of stockholder proxy access that is applicable to their company— regardless of whether that level is more or less restrictive than under proposed Rule 14a-11. Accordingly, we believe that the Commission should provide in its final rules that a stockholder proposal submitted under Rule 14a-8(i)(8) should not be limited as currently proposed.

B. Substantially Implemented. If a company is subject to proposed Rule 14a-11, it would be inappropriately disruptive to require companies thereafter to include in the company's proxy materials stockholder proposals that seek only incremental changes to that procedure. Such incremental changes would subject us to annual uncertainty as to the specific nature of our director-election process. The Commission should provide clear guidance regarding the application of the "substantially implemented" standard in Rule 14a-8(i)(10). The "substantially implemented" standard should appropriately balance a company's proxy access process against the potential disruption of a yearly stockholder access proposal; thus, unless the Rule 14a-8(i)(8) stockholder access proposal is designed to materially amend the company's current procedure, the proposal should be properly excludable.

C. Cap on Number of Nominees. We believe that the Commission should specifically permit companies to exclude from their proxy materials any stockholder proposal that would create a proxy access procedure that could result in the election of stockholder nominees to more than 25% of a company's board of directors. We believe this is consistent with the Commission's intended goal that proxy access through a company's proxy statement should not be used by stockholders who are seeking control of a company.

D. Ownership Requirements. A proxy access stockholder proposal will impact a company's long-term operations significantly. We believe that the existing $2,000 standard (approximately 60 shares of our stock) fails to require an interest in the company that is commensurate with this impact. As such, the ownership of a stockholder that may require the company to include such a proposal should be significantly beyond the ownership standard for other proposals under Rule 14a-8. We believe that the ownership standard for a proxy access proposal under Rule 14a-8(i)(8) should be at least 1% of the company's voting stock. While this ownership threshold is higher than for other proposals under Rule 14a-8, it is lower than the proposed ownership threshold under proposed Rule 14a-11 in recognition that the stockholder is proposing an access process, rather than nominating a particular person as an director-nominee.

E. Focus on Right of Stockholder to Have Nominee Included in the Company's Proxy Materials. The proposed amendments to Rule 14a-8(i)(8) would permit a company to exclude a proposal that nominates a specific individual for election to the board of directors, other than pursuant to proposed Rule 14a-11, an applicable state law provision, or the company's governing documents. This proposed language premises exclusion improperly upon whether or not the *nomination* is pursuant to state law or a company's governing documents, rather than upon whether or not *the inclusion of that nominee* in the company's proxy materials is pursuant to state law or a company's governing materials. As the Commission notes in the Proposed Rule, it is common for state law and companies' governing documents to provide stockholders with the right to nominate candidates for election to the board of directors – it is the inclusion of

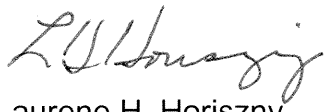
those nominees in a company's proxy materials that is generally beyond the rights provided to stockholders by state law or a company's governing documents. Accordingly, this language should be revised, as it focuses improperly on a stockholder right to nominate a candidate for election to the board of directors, rather than a stockholder's right to have a nominated candidate included in the company's proxy materials.

Conclusion

We appreciate the opportunity to comment on these important proposals which will significantly affect the governance of BorgWarner. We would be happy to provide you with any further information you request.

Respectfully submitted,

BorgWarner Inc.



Laurene H. Horiszny
Chief Compliance Officer