February 3, 2020

Vanessa A. Countryman, Secretary
US Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Comments on Proposed *Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8* (File Number S7-23-19) and *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* (File Number S7-22-19)

Dear Ms. Countryman:

NorthStar Asset Management, Inc. ("NorthStar") is a wealth management firm based in Boston. We represent over $600 million in assets under management for clients including individual investors, families, and nonprofit organizations who believe that investing in companies with responsible corporate policies and procedures will protect their investments and allow for productive long-term company growth. As part of our fiduciary duty to our clients, NorthStar has actively used the shareholder proposal rule for nearly 20 years to engage corporations on a variety of concerns.

The current shareholder proposal guidelines allow investors to engage with the companies in their portfolios, making direct, official contact with companies as necessary to protect shareholder value. Our clients care very much about the companies in their portfolios, and our ability to engage with management on their behalf around important issues ranging from governance to human rights. This ability to engage has allowed each shareholder to embrace their role as owners of these companies and to pay careful attention to their investments. Shareholders, like the clients of our firm, have repeatedly asked companies to improve their behavior and to examine the risk to shareholder value and company brand name from significant, unanticipated missteps.

We know that our contributions have led to the commonplace issuance of corporate sustainability reports and industry-wide discussions about appropriate standards of behavior. Concerns about environmental impact, responsible sourcing, inclusion and diversity are the result of shareholder-company engagement and have become priorities for corporations, resulting in significant improvement in their global behavior. These innovative improvements have, by and large, been the result of small shareholders using the proxy process to educate and engage management, company boards, and other shareholders. Without the rights protected by Rule 14a-8, small shareholders – those who do not have the ear of corporations like large institutional investors do – would struggle to have productive engagements with their investee companies.

If our right to engage portfolio companies is constrained, we feel that our firm's ability to abide by our fiduciary duty to protect our clients' assets would be at risk. In our view, the shareholder proposal

process is an efficient and logical process that screens out proposals that do not meet the Rule's guidelines or do not resonate with shareholders, and allows for effective shareholder engagement.

NorthStar urges the Securities and Exchange Commission (SEC) to reject the current proposals on rule 14a-8 and proxy advisors as they do not protect small shareholders. In this letter, we detail the vital nature of the shareholder proposal rule, our successes in utilizing it, and we also respond to specific questions listed in the rulemaking proposals.

Company-Shareholder Communications

NorthStar is a long-term holder of company stock with a long-term outlook for client investments. With that perspective in mind, our firm initiates dialogues with portfolio companies both through letter-writing as well as the shareholder proposal process. Small shareholders with innovative ideas, like our firm, often identify issues of concern and pursue their own research before engaging a company. When we do initiate outreach, we raise issues of clear material interest to the broader shareholder population. In the thirty years since our firm's founding, we have watched ESG (environmental, social, governance) matters become crucial inputs into the process that investors across the United States and the world use to identify material risks and examine companies' responses and actions to mitigate those risks. NorthStar engages companies on such material matters in order to protect the investment of our clients. We raise questions about and seek clarification on matters that may affect company profitability, brand name reputation, efficiency, and, therefore, long-term health of the company and shareholder return.

In our extensive experience engaging companies, management is vastly more likely to respond to our outreach on these material matters if we have engaged through a shareholder proposal. As noted above, small shareholders have incredibly limited means to communicate with investee companies outside of the shareholder proposal rule – many companies do not publicize a phone number or email address that allows a shareholder to reach an investor relations representative, and inquiries to general phone numbers or email inboxes often go unnoticed.

When shareholders *are* able to make contact through a letter, companies often respond with limited engagement that may consist of boilerplate letters or vague reassurances that the company will consider the shareholder's comments. These "engagements" do not allow us to garner responses to specific concerns that would help us protect our clients' investments. For example, in 2019 our firm wrote letters to a significant portion of our portfolio companies to address a topic area that is of concern to our clients. Of the companies to whom we wrote, only 29% responded to our outreach in *any way* while a mere 12% responded in a manner that led to company action. This stands in stark contrast to our experience of engaging companies through the shareholder proposal rule. In the past 10 years of engagements, we estimate that approximately 57% of shareholder proposals that we have filed have resulted in an active dialogue with the issuing company. For the proposals relating to material environmental or social issues specifically, that rate is slightly higher – at least a 60% dialogue rate. Each year those dialogues have resulted in policy changes or actions that we believe have benefitted shareholder value long-term.

In the Commission's proposal related to Rule 14a-8, the Commission claims that shareholders now have "alternative ways" of communicating with companies, including social media. We urge the Commission to understand that communication between a shareholder and her investee company through social media outlets is **in no way a substitute for formal engagement with the company**. While companies may experience public relations pressure through those services, it would be incorrect to assume that

shareholders can effectively communicate with companies through such routes. Company employees that attend to posts or direct messages in social media platforms likely have no understanding of investor relations practices or how to handle incoming requests of this type. In fact, we can confirm that this method is unhelpful – in one particular experience in which a company failed to respond to our other investor communications, we attempted to reach out through the company's social media accounts. All methods of communication were unsuccessful. Shareholders, as part owners of the company, should not be relegated to attempting to communicate with investee companies through such ineffective and informal means.

Also in the Commission's proposal regarding shareholder proposals, the Commission suggests that it may "require a statement from the shareholder-proponent that he or she is able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal" and require the shareholder to state specific days and times she is available to discuss the proposal. We believe these suggestions are not only impractical and excessively micromanage the process, but they also put an undue burden on both issuers and proponents.

Specifically, there are numerous logistical challenges that the Commission cannot foresee when proposing such a requirement. After receiving a shareholder proposal, there are many avenues that companies may take when deciding how and when to open a dialogue with the proponent. As shareholder proponents, we have received prompt responses from companies but have also received responses a month or more after filing the proposal. For some companies, they prefer to have significant internal deliberation before bringing the proponent into the conversation; other companies believe that it's more valuable to have shareholder proponent input early in that process. Asking shareholders to provide available days and times within a specified timeframe that the SEC has deemed appropriate does not allow for the natural variation that exists in these discrete corporate cultures and structures.

From our experience, it is standard practice for shareholder proponents to offer engagement in their filing letters, and it is also typical that shareholder proponents routinely accept dialogue opportunities with issuers. When engagement begins, the procedure of finding a mutually agreeable meeting time is often a fairly elaborate process in which numerous individuals on both sides must negotiate their preferred times in order to find one hour that is available for all parties involved. This laborious but fruitful process of identifying which staff on either side should be present for the dialogue and then *when* they are available would be utterly impossible to achieve through the Commission's proposed requirements on this issue.

Furthermore, we believe that the assertion that all shareholders have the ability to reserve specific blocks of time on business days well in advance for an engagement (an engagement which may actually never occur) to be inherently disenfranchising for Main Street investors. The Commission's proposal does not analyze the impact of this requirement on small investors and asset managers. By making it too difficult and costly for small investors and asset managers to comply with the number of meetings that would be required in an extremely and artificially compressed timeframe, the proposal would jeopardize small investors' ability to exercise their rights to participate in shareholder democracy and threaten small asset managers' ability to compete. The Commission has not taken into account that individual investors who file shareholder proposals often have jobs that occur during business hours. Asking such a shareholder to reserve multiple hours over the course of a 20 day time span is obviously a high hurdle for any ordinary investor. This would be particularly burdensome on hourly workers or those on a swing-

schedule who may not have their work schedule far enough in advance and may find it logistically impossible to commit to being available during multiple business hours. Small asset managers may also have difficulty blocking out in advance the number of meetings that would be required.

We also question the Commission's authority to require shareholders and asset managers to meet with companies, but if the Commission continues to pursue a meeting requirement we request the Commission respond to these problems that the proposal would cause:

- It is our experience that companies sometimes do not engage the proponent for more than 30 days after filing the shareholder proposal. In those cases, what role would the proposed requirement play?
- If the days and times offered by the shareholder are not times company staff are available, but given that the shareholder may have limited other available times, how does the Commission expect the shareholder or company to resolve this discrepancy?
- Forcing shareholders and company staff to adhere to a day or time that is not mutually agreed upon will likely result in an inability to gather the most issue-specific staff from both sides. What loss of value to shareholders will result if issue area experts are not able to convene to discuss these issues because the Commission has required these specific, pre-identified available time slots?
- If the Commission requires both the proponent and the company to offer available times that contradict each other, how will this paradox affect the shareholder's proposal filing? Will the proposal become ineligible if the shareholder and company are unable to find a mutually agreeable discussion time?
- How does the Commission expect Main Street investors with typical business hour jobs or hourly workers to meet this requirement?

If the Commission does put in place this erroneous rule requiring shareholder statement of availability, then the issuer should be required to do the same. Clearly, this requirement would add an unreasonable burden on both shareholders and companies, and would further complicate an existing functional process by adding uncertainty and additional complexities.

Instead of requiring investors to commit in advance to specific times that they can meet with the company, we suggest that a reasonable alternative within the Commission's authority would be to ask companies to disclose whether they sought to engage with the proponent prior to filing a no-action request.

Growing Investor Interest in ESG Supports the Need for Shareholder Engagement

Citing a report by the Council of Institutional Investors (CII), the Commission's proposed rulemaking on shareholder proposals states that "the 3%, 6% and 10% resubmission thresholds preclude a much smaller proportion of shareholder proposals today than in the past." The perceived implication from the Commission's positioning of this quote is that it is a *problem* that a higher percentage of votes are surpassing these thresholds – that this sort of increase in which proposals are overcoming these thresholds is a problem to be solved. We disagree with this interpretation of these data.

In fact, we assert that it should be *applauded* that shareholders are becoming more active participants in the proxy process by reading their proxies more thoroughly, considering long-term implications of issues brought by non-management shareholders, and supporting those new ideas that they believe

have value to their own investments. The Commission's pursuit of a rulemaking that, it appears, is intended to tamp down on the submission of shareholder proposals seems counterproductive to its own goal of supporting a competitive market. We do not believe that the Commission has justified why it appears to seek to censor shareholders and limit engagement.

We believe that the Commission's professed purpose – to protect Main Street investors – will be undermined by this rulemaking proposal if the resubmission thresholds are revised as proposed. Under the proposed 15%/25% increases, the Commission indicated that that "there would be 14%/27% more proposals that would be excludable than under the current rules." This is not only a reduction of resubmitted proposals themselves but represents a significant reduction in shareholder engagement – dialogues between proponents and companies would suffer, but communication between proponents and other shareholders would also be sharply curtailed. Such changes would significantly reduce the opportunity for Main Street investors to learn from other shareholders what issues are of concern and how the company responds to those concerns. Reducing opportunities for shareholder education and input does not offer Main Street investors protection. In fact, we fear that such censorship will only offer CEOs and companies protection in the form of further insulating management and the board from Main Street shareholder concerns, including company retirees that may seek to engage the company.

We also believe it's important to address the issue we see repeated in the Commission's proposal – that a majority of shareholders is the support level required for a proposal to "pass" or otherwise be considered well-supported by shareholders. Due to the high volume of institutional ownership of most public equity (sometimes 70-90% of a company's outstanding shares, with the "Big Three" cumulatively owning as much as 80% of indexed shares[1]), it's crucial that the Commission understand the ways in which institutional investors' practices impact shareholder proposals and may not necessarily represent "shareholders at large." **We request that the Commission examine data on institutional investor proxy voting activities.** Specifically, we request that the Commission:

- Elicit proxy voting process policies from institutional investors in order to study the ways in which institutional proxy voting ownership affects the results of shareholder votes and whether those effects on smaller investors should be considered when pursuing the current rulemakings.
- Analyze, evaluate, and report on all instances where voting results of retail shareholders or smaller firm are statistically significantly different from the voting records of large institutional investors to determine if there are common factors that differentiate large institutional voting patterns from the voting patterns of individual investors or small institutions.

Additionally, we suggest that lower voting results on shareholder proposals may likely represent the will of individual retail investors – Main Street investors – not that of institutional investors, particularly in instances where a proposal has not reached majority support. With this in mind, we request that the Commission provide a justification for why it would seek to increase resubmission thresholds in a way that would discount the views of smaller shareholders when large institutional investors did not agree with them. We fear that increasing the resubmission thresholds in this way will further shift the balance of power more fully to institutional investors and away from individual shareholders.

Furthermore, it is our understanding that many institutional investors vote to support company management recommendations with little to no input from their own shareholders. Thus, institutional investors' analysis of the issues in both management and shareholder proposals often simply reflects

[1] https://www.bloomberg.com/news/features/2020-01-09/the-hidden-dangers-of-the-great-index-fund-takeover

company management's recommendation. We believe that the Commission's unjustified reliance on majority support as its measuring stick for meaningful support is severely flawed, and we urge the Commission to evaluate the internal workings of institutional investors – the processes that determine whether a shareholder's proposal can ever reach the majority support threshold. In particular, we request that the Commission ask:

- Can institutional investors provide evidence that they have evaluated a proposal's merits properly and objectively including input from their own shareholders?
- If shareholder proposals are not given a full evaluation by institutional investors – those that control the vast majority of voting shares in the U.S. – how can the Commission identify another measure by which "meaningful support" is determined?

In our experience of filing shareholder proposals, companies have often been responsive to votes far below majority. In one example, we resubmitted a shareholder proposal on the human right to water that had received 7% of the vote at the prior annual meeting. The company responded to the resubmission by pursuing an in-depth engagement with our firm that resulted in the adoption of a companywide human right to water policy. That company then went on to receive significant accolades for its work on water, including international recognition that it used in marketing material. It is safe to presume that the company and its shareholders found significant value in the results of this engagement, an engagement that did not need to reach levels of majority vote in order to be enacted.

Furthermore, evidence clearly indicates that Main Street investors are concerned about issues that would be categorized as "ESG" (environmental, social, or governance)[2] – such as climate change, diversity, and human rights protections. However, institutional investors that vote the proxies of those same Main Street investors largely vote against[3] the shareholder proposals that seek to support solutions for climate change, increasing diversity, and protecting human rights. We believe that institutional investors should be required, or at least encouraged, to poll their underlying clients or investors in order to identify their preferences on these issues. Given that institutional investor proxy voting appears to be at odds with the desires of the Main Street investors they are representing, and given the importance of those votes in determining what the Commission considers "meaningful support," we assert that this rulemaking should not move forward until this discrepancy is addressed in a significant manner. In fact, given the institutional bias of large asset managers to vote in line with company management, the fact that individual investors and small firms are able to reach levels of support that meet the current resubmission thresholds is clearly meaningful. We believe the Commission should delay reconsidering thresholds (and certainly not increase them further) until this voting bias by the large dominant institutional investors has been addressed.

Ownership & Filing Requirements

We urge the Commission to reject the changes to the ownership thresholds. The dollar amounts proposed in this rulemaking are not appropriate or realistic – requiring a $25,000 holding amount for one year of ownership or even $15,000 for two years of ownership puts the shareholder at great risk without allowing her the opportunity to respond to company crises through the proxy process. Three years of turmoil can be highly detrimental to a Main Street investor's portfolio while she is waiting for the opportunity to engage her investee company. Encouraging small investors to take even larger stakes

[2] https://corpgov.law.harvard.edu/2020/01/13/into-the-mainstream-esg-at-the-tipping-point/
[3] https://www.ft.com/content/5d342a5d-443d-3327-9502-2361f37f251c

in equity holdings in order to protect their ability to engage investee companies puts an unfair burden on those smaller investors, reducing investors' ability to diversify and disproportionately increasing risk during periods of company controversy. Increasing the filing threshold would force small investors to choose between diversification and participation in shareholder democracy. This disproportionate negative impact on small investors is not justified by the Commission's economic analysis.

Furthermore, we must remember that $25,000 of a company's stock is a significant investment for a small shareholder. However, even $25,000 may not truly be a sufficient investment due to stock value fluctuations. Company controversy or market turmoil that engenders a need for an investor to engage an issuer may result in the shareholder's investment shrinking to below the required filing threshold which would push back the timeline of when that shareholder can engage the company. Company controversies and missteps cannot be predicted, nor can they be postponed until a three year holding period has passed; a shareholder should not be required to wait out such a timeframe when engaging the company could have significant benefits for both the Main Street investor and shareholders at large.

Even for investment advisors at an asset management firm, this threshold poses inappropriate challenges. For example, a $25,000 investment could be a large purchase for a firm's clients, and advisors often prefer to make those purchases incrementally. Yet, an advisor with an ESG perspective likely also believes in the crucial nature of the right to engage investee companies on clients' behalf in order to protect their investments. Changing the ownership threshold to $25,000 for the one year holding period would exert pressure on advisors to consider buying more shares in a company sooner than they otherwise would.

Issues of Representation or Other Restrictions on Filing

Many proponents, including our firm, file proposals using shares owned by legal entities related to the firm, such as the firm's pension plan, in order to safeguard the privacy of clients. While we represent our full client base and their equity holdings in every company dialogue we pursue, it is our firm's policy to file proposals with the firm's pension plan. The Commission's proposal regarding Rule 14a-8 indicates that it may require a "natural-person shareholder" to hold the requisite shares and file the shareholder proposal. Such a requirement would undermine both our right to protect client personal information and our rights as shareholders to engage our investee companies.

Additionally, the Commission has also asked whether it should adopt a limit on the aggregate number of shareholder proposals a person could submit in a particular calendar year to all companies or the number of proposals shareholders in general can submit to a particular company each year. We would oppose such a proposal, and the Commission has provided no justification for such a change. We believe such requirements would unnecessarily micromanage the Rule 14a-8 process and censor shareholders' rights of engagement. Companies often receive very few (or zero) shareholder proposals. If a company has received an unusually high number of proposals, this is almost certainly due to problematic company actions, insufficient response to controversies, or non-responsiveness to shareholder concerns. Shareholders of companies receiving higher numbers of shareholder proposals deserve to know that their investee companies are facing such shareholder concerns.

Furthermore, shareholders engage companies on a variety of disparate and important issues, the number of which can vary by year and between proponents. Limits set by the Commission that constrain how many proposals a proponent would be able to submit market-wide or relating to how many proposals each company could receive would be entirely arbitrary. Furthermore, shareholders often

identify issues that need company attention throughout the year. Just as the timing of company controversies or corporate actions are unpredictable, so too would it be impossible for a shareholder to fully predict in the beginning of a proxy filing season the full breadth of issues that will need corporate engagement during the year. Imposing these sorts of limits, rather than allow for natural variation based upon company actions and investor responses, would censor shareholders who engage based upon an identified concern that companies have failed to address.

In response to these proposed impositions, we ask the Commission to identify the risks to shareholder value that exist if a shareholder is restricted in her actions to engage the company due to an arbitrary limit set by the SEC. What recourse would a shareholder have against the Commission if such a limit kept her from engaging a company after a crisis and she was forced to either hold the stock longer than she wished in order to engage a following year, or sell and take losses in a situation in which she felt engagement with the company could have provided her with a safer course of action? The Commission has also not explored the long-term impact on cost of capital if long-standing shareholder rights are no longer realistically accessible.

Lastly, the Commission sought input on whether it should require companies to disclose how many proposals were withdrawn and therefore not included in the proxy statement. We support requiring company transparency regarding data on shareholder proposals that were successfully withdrawn, and we encourage the Commission to require a broad set of data on these issues including the number of proposals a company received but failed to respond to in any substantive way. We also encourage the Commission to require that the shareholder's name be published in the proxy statement, allowing for more efficient shareholder-to-shareholder communication on issues of concern.

Resubmission Thresholds, Vote-Counting Methodology, and Momentum Requirement

We urge the Commission to reject all changes to the resubmission thresholds, and the first year increase especially, as we disagree with the rulemaking proposal's statement that "our proposed increase for the initial resubmission threshold from 3 to 5 percent would exclude proposals that are very unlikely to earn majority support upon resubmission." We believe that it is a fallacy to say that data alone can preemptively determine which proposals that garner less than 5% vote the first year will go on to achieve significantly higher votes in future years. Shareholder decisions on whether or not to support particular shareholder proposals can be difficult to forecast.

The variation of company ownership and industry preferences is so wide that any sort of increase in resubmission thresholds is inherently arbitrary and without merit. The increase of the first resubmission threshold from 3% to 5% cannot distinguish a proposal that will gain momentum from one that will fizzle out. NorthStar frequently files shareholder proposals on material controversial issues; those proposals often begin with low vote results but can sometimes increase significantly from year to year. We have filed shareholder proposals on material but controversial topics that earned single digits on their first year votes, but dramatically increased to 30-40% of the vote just one year later.

In response to the Commission's contemplation on changes to the vote-counting methodology, we specifically urge revision of the treatment of voting results at companies with multi-class share structures. Our experience as shareholder proponents on one particular issue at multi-class share companies illustrates the perilous nature of such companies. We have filed for several years at two big technology companies (neither of whom have responded to engagement requests on this issue). Despite the fact that our proposals garner an estimated 80-90% support of "outsider" (non-insider) votes, it is

mathematically impossible for our proposal to ever "pass" with majority support if the insiders do not support it. Nearly all outside shareholders – institutional holders as well as Main Street investors – wish to see the passage of the shareholder proposal we have filed at those companies, yet shareholder voice is meaningless there.

Under the newly proposed rules with a "momentum requirement," shareholders at multi-class share structure companies would be at *particularly high risk* of losing their right to record their dissent. At Alphabet, Inc. in 2019, our proposal earned 30% of the overall vote including insiders, which we estimate equates to approximately 92% of "outsider" shareholder support. Under the newly proposed momentum requirement, this proposal would be very vulnerable to being omitted in future years even if the vast majority of outsider shareholders continue to support it. A slight dip to 26.9% support in favor (still representing 80-90% of outsider votes) would exclude our proposal for a lengthy "cooling-off" period. A 3.1 point decline (26.9% following a 30% vote) is exceedingly minor and could be a result of a multitude of factors including a change in institutional ownership. The 80-90% of outsider shareholders that urgently seek the reform described in our shareholder proposal should not be censored by an arbitrary "momentum requirement" that causes their voices to be silenced.

The momentum requirement in general is ill-conceived as it does not account for the natural variation in shareholder support that occurs throughout the engagement lifecycle, but it will be particularly damaging for shareholders of multi-class share structure companies where insiders already control the majority vote without owning a majority of shares. In fact, the vote-counting methodology for multi-class share structure companies already fails to represent an accurate portrayal of the opinion of shareholders at large; revising vote-count methodology would be absolutely crucial should the Commission revise resubmission thresholds as it has suggested in its proposals. Allowing multi-class companies to omit proposals that declined in support by 10% would result in further insulation of management against the desires of their shareholders.

We also believe the Commission must consider that the momentum requirement will actually disincentivize companies from engaging with a shareholder proponent when the proposal may be subject to this momentum requirement. If a proposal has overcome the 25% threshold, companies may abuse the momentum requirement by intentionally failing to engage the proponent on a future resubmission with the aspiration that its vote count will dip slightly the next year. Rather than responding to a shareholder vote of 25% or more, companies may use 25% as a trigger to stall further dialogue. In fact, we assert that this requirement would incentivize corporate managers to ignore shareholder engagement and significant votes of their shareholders, contrary to the Commission's professed intent to encourage engagement. In short, we believe that all variations of a momentum requirement suffer from the potential for companies to "game the system" in order to omit shareholder input on material issues.

In response to specific questions listed in the rulemaking proposal: **we urge the Commission to entirely eliminate any sort of momentum requirement.** Applying a momentum requirement to any of the situations posited by the rulemaking – such as to all shareholder proposals that are resubmitted or to shareholder proposals that achieved majority support but also declined by 10% over prior year – would be highly detrimental to the process of filing shareholder proposals. The existing process of filing a shareholder proposal is already fairly complex and may intimidate retail investors who contemplate participation. Adding greater complexity with such an arbitrary provision would not only further reduce shareholder engagement through exclusions from a so-called "loss of momentum," but it would alienate even more individual shareholders who may consider participating in this process and threaten

shareholder value. Reducing such a key element of minority shareholder rights will also harm the overall cost of capital in our securities markets. We urge the Commission to identify ways in which it can support and encourage individual investor participation in this process, not disenfranchise larger numbers of shareholders.

The Commission has also not established that its momentum requirement would solve any real problem that is not naturally addressed by the market. When shareholder proposals are re-filed but investors have lost interest, those proposals will eventually fail to meet the current resubmission thresholds and are forced into the existing "cooling-off" period. Putting in place a separate and specific exclusion for proposals that experience swings in support from year to year is not only unwarranted but risks barring proposals with significant shareholder support based on irrelevant and arbitrary factors, including errors in vote counting due to the hopelessly imprecise proxy plumbing system. Excluding a proposal that achieved greater than 25% vote (but declined by 10% over the prior year's result) would deny a shareholder proposal that still represents a significant portion of shareholder support and may very well rebound to a much higher number in future years. Such a restriction would be an inappropriate restriction on shareholder engagement.

Proxy Advisors

Finally, we urge the Commission not to adopt the changes proposed on proxy advisors because they are not justified on the basis of economics and because they would inject pro-management bias into the proxy voting system. As a small firm, we research and process all of our clients' proxies in-house; we are not a client of any proxy advisory firm. However, as an active proponent of shareholder proposals, we believe that it is crucial that proxy advisors are able to analyze and recommend to their clients in an unbiased manner. The changes proposed in *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice* would put that impartial analysis at risk.

The Commission's proposal seeks to hold proxy advisors accountable to corporate managers by giving managers two rounds of review and comment on proxy advisors' advice. The Commission has emphasized that the review would cover facts, methodologies, opinions, and beliefs, and that proxy advisors that do not conform to management comments can be sued by the company under SEC Rule 14a-9. The Commission's analysis and request for comment ignore the First Amendment implications of imposing a rule that has the effect of censoring proxy advisor statements that conflict with management views. The proposal also fails to address the negative impact it would have on investors' use of private ordering to impose value-enhancing standards – i.e., methodologies – on companies market-wide. We also believe that the Commission has failed to consider more rational and less biased ways to promote factual accuracy, such as enforcing more accurate corporate disclosures in the first place. In fact, the Commission's proposal only encourages shoddy proxy disclosure by giving companies two rounds of private review with no public transparency as to how companies influence proxy advice. Moreover, management review would inevitably only address facts, methodologies, opinions, and beliefs that negatively impact *management's* private interests; we can hardly expect a company to raise any inaccuracies or other matters that would work against management's interest. While issuers would get up to two opportunities to review and recommend revisions on proxy advisor recommendations, shareholder proponents would receive zero opportunities to review those recommendations in advance. This makes the proposal both incurably biased and ineffective despite the SEC's ostensible purpose of promoting accuracy.

We know from our experiences with corporate engagement that issuers and proponents often do not initially agree on matters shareholders bring up in shareholder proposals. The company perspective on

these issues is certainly skewed towards the existing knowledge base of company staff, and in some cases we have found that knowledge base is incomplete or inaccurate. Very often, an integral aspect of our corporate engagements on new issues is an educational process in which we describe to the company the results of our research on an issue or that of issue area experts. Should companies receive the opportunity to demand changes to proxy voting advice related to these issues that require greater conversation, the resulting proxy voting advice will not only be even more skewed towards the company than it is now, but may be inaccurate. We believe the Commission should entirely strike this proposal from any final rulemaking on proxy advisors. Should the Commission move forward with this aspect of the rule, we believe it would be vital that the Commission remove the censorship threat and ensure that proponents receive equal treatment and are also offered an opportunity to review and refute draft proxy voting advice.

Conclusion

The Commission's various data in the economic analysis illustrate that fewer shareholder proposals are being filed over time and higher vote support of shareholder proposals that do go to a vote. Taken together, it is clear that investors support shareholder engagement and perceive that they are deriving benefit from such engagements, and also that the existing limits set forth in Rule 14a-8 have created a functioning system that does not require any of the more cumbersome, micromanaging, or arbitrary alterations that the current rulemaking contemplates.

Our firm urges the Commission to reject the currently proposed rulemakings on shareholder proposals and proxy advisors for all the aforementioned reasons.

Should you need anything further, do not hesitate to contact me at mschwartzer@northstarasset.com. Thank you for the opportunity to comment on this matter.

Sincerely,

Mari C. Schwartzer
Director of Shareholder Activism and Engagement