

Steve Strauss

January 10, 2019

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Shareholder Proposal at Norfolk Southern Corporation

Ladies and Gentlemen:

I am the lead Proponent for a shareholder proposal submitted to the Norfolk Southern Corporation for inclusion in our company's 2020 annual meeting proxy material. By letter dated December 20, 2019 the law firm of Covington and Burling, LLP, (Covington) on behalf of Norfolk Southern Corporation (the Company), gave notice to the Securities and Exchange Commission (The Commission) of their intention to exclude the proposal from the proxy material (the "No-Action Request"). Covington also requested confirmation from the Commission staff that they would not recommend an enforcement action to the Commission on this omission decision.

Proponents wish to respond to and rebut the exclusion arguments made by the Company in accordance with Rule 14a-8(j) under the Securities Exchange Act of 1934 and various interpretations provided to the Rule. Additionally, the Proponents request that the Commission Staff request that the Commission approve an enforcement action should the Company continue to exclude the resolution from the 2020 proxy material.

The Proposal

As noted in Covington's No-Action Request on behalf of the Company to the Commission Staff, the Proposal (attached in full) provides in pertinent part:

BE IT RESOLVED, that the shareholders of Norfolk Southern Corporation request that the Board of Directors of our company review our compliance with 49 U.S.C. § 24308(c) and develop a program to reduce delays to passenger trains operating on our right of way so long as the passenger train is made available by Amtrak in the time slot scheduled for it.

Basis To Deny No-Action Request

We hereby respectfully request that the Staff concur in Proponents' view that the Company may not exclude our Proposal because the issue of passenger rail on-time performance has transcended the day-to-day business operations of the Company, raising policy issues specific to the freight railroad industry and the Company that are significant enough to warrant a shareholder vote.

Proponents' Rebuttal Analysis

A. The Proposal May Not Be Excluded Under Rule 14a-8(i)(7) Because Railroads' Compliance With 49 U.S.C. § 24308(c) Has Become A Significant Public Policy Issue

The Company, quoting Exchange Act Release No. 34-12999 (Nov. 22, 1976), acknowledges that a proposal focusing "on a significant policy issue" is generally not excludable "because the proposal would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." The Company also relies on Staff Legal Bulletin No. 14E (Oct. 27, 2009) to suggest that proposals which focus on tasks "integral to management's ability to run the day-to-day business" of the company may be properly excluded.

Neither of these address criteria for determining the elements required to make a particular proposal relevant to a significant policy issue. Rather, Staff Legal Bulletin No. 14K (Oct. 16, 2019) advises that Staff takes a "company-specific approach in evaluating significance" and that if a company's no-action request fails to focus on the significance of the issue to that company "the Staff believes the matter may not be excluded under Rule 14a-8(i)(7)."

The Company's recitations regarding compliance with legal and regulatory requirements and decisions concerning customer relations are rote and fail to address with specificity the underlying significant policy issue – late passenger trains. Indeed, the Company's position solidifies the nexus between the growing congressional and public concern over late trains and the Company's business operations.

For example, the No-Action Request identifies a number of cases and decisions where Commission staff concurred that a company's legal compliance activities relate to ordinary business matters and are excludable under Rule 14a-8(i)(7). Cited are *JPMorgan Chase & Co.* (Mar. 13, 2014), *General Electric Co.* (Jan. 4, 2005) and *Sprint Nextel Corp.* (Mar. 16, 2010), among others.

Our Proposal is fundamentally different from the cases cited by the Company because it pertains to an objectively measurable action (train delays) and not subjective issues (such as fiduciary responsibilities) susceptible to a much broader range of opinion. While people may disagree about the exact number of minutes late a train might have to be to be declared a late or delayed arrival, train arrivals are measurable statistics which NS gathers and reports daily and weekly for all of its operations.

The crucial fact is not whether the Proposal concerns activities that the Company conducts in the ordinary course of business, but whether the policy issue *transcends* those ordinary activities. Congressional action and recent litigation demonstrate that the policy issue implicated in our Proposal meets this test and that it has a clear nexus to the Company's business.

The Congress of the United States has determined that there is a public interest in having a national passenger rail network and, in return for the U.S. assuming certain financial liabilities and allowing freight railroads to exit the passenger train business in 1971, required them to give preference to trains operated by Amtrak over freight railroad right of way. This is the "Preference Clause" contained in 49 U.S.C. § 24308(c).

The issue of how freight railroads dispatch Amtrak passenger trains has become an important public policy matter. In 2008 Congress gave Amtrak and the Federal Railroad Administration

the right to set on-time performance standards for passenger trains on freight railroads (Passenger Rail Investment and Improvement Act of 2008, as amended, Section 207). The freight railroads, through the Association of American Railroads, twice litigated this matter to the United States Supreme Court. In 2018, the Supreme Court declined to grant *certiorari* to the freight railroads in their most recent claim, clearing the way for Amtrak and the Federal Railroad Administration to resume creating metrics and standards that would govern the way the Company dispatches passenger trains on its property.

Amtrak President Richard Anderson, in testimony before Congress on several occasions, has noted that train delays on Amtrak's long-distance trains are one of the primary problems affecting ridership on long distance trains. In June 26, 2019, testimony to the U.S. Senate Committee on Commerce, Science and Transportation he called the delays an "existential problem" and noted that only about 43 percent of Amtrak's long-distance trains arrive without delays.

Over the past ten years Congress has recognized the growing importance of intercity passenger trains in helping solve regional highway congestion problems and for their role in moving towards more environmentally friendly transportation. The U.S. Bureau of Transportation Statistics reports that passenger trains are the most efficient way to move large numbers of people, just as data from the American Association of Railroads show that freight trains are the most efficient way to move large volumes of freight.¹ In 2009 with the passage of the American Recovery and Reinvestment Act, Congress created new federal programs to support intercity passenger train service, increasing funding for passenger train service improvements.

B. The Proposal May Not Be Excluded Under Rule 14a-8(i)(7) Because The Proposal Does Not Constitute Micromanaging

The Proponents make no attempt to micromanage or suggest how management might act to correct what we believe to be on-going violations of 49 U.S.C. § 24308(c). Nowhere in Proponents Proposal and Supporting Statement are any suggestions about how to correct this situation.

The Staff has recently taken the position in *Anadarko Petroleum Corp.* (Mar. 4, 2019) that a proposal seeking a report describing how that company planned to reduce its contribution to climate change and meet Paris Agreement targets was not excludable because it "deferred to management's discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions" (SLB 14K).

The "level of prescriptiveness of the proposal" is the key to assessing excludability under the micromanagement standard, not whether a proposal presents issues that are too complex for shareholders to understand (SLB 14K). The Proponents in this matter do not prescribe any specific actions that the Company must undertake, nor does the language in the Proposal or the Supporting Statement limit the Company's flexibility in any way apart from simple compliance with law.

In this instance, the Proponents do not even go as far as the successful proponents in *Anadarko*. The Proposal makes no time-bound demands. It does not detail any particular on-time standard or metric. It does not propose specific financial incentives or penalties. It does not

¹ <https://www.aar.org/wp-content/uploads/2018/07/AAR-Environmental-Benefits-Movig-Freight-by-Rail.pdf>

dictate the form of the requested review. Instead, Proponents expressly defer to Management's discretion to consider the Company's current compliance and expressly leave to the Company the details on whether and how a program developed by the Company might address the policy issue. The Supporting Statement in our Proposal does not modify the intent of the Proposal, nor does it impose additional requirements or burdens. We have full faith in management's ability to craft a solution to this problem.

C. The Proposal Addresses A Small Part Of The Company's Overall Business

Proponents note that the Company in its No-Action Request failed to claim that our Proposal was excludable on the grounds that Amtrak service represents an insignificant portion of the Company's business under Rule 14a-8(i)(5). It is clear that doing so would involve recognition that the handful of daily trains operating over the Company's extensive multi-state network are such a small portion of the Company's business that how they are run does not materially affect the company's primary freight business.

In background information quoted in the No-Action Request, the Company acknowledges that it operates over "approximately 19,500 route miles primarily in 22 states and the District of Columbia." In the Norfolk Southern 2018 annual report the Company also points out that it owns or leases 4,197 locomotives and 61,495 freight cars and employs approximately 26,660 people (pp. K8 & K9). Proponents note that on an average day *Amtrak only operates 34 trains on the entire Norfolk Southern network.* (Refer also to the NS route network map on page K4 of the 2018 Annual Report.)

According to information published by Amtrak, their passenger trains operate on only 2,103 NS route miles, approximately 10.8 percent of the railroad's network. In most cases there is only one train per day in each direction on a route. In very limited instances, there may be route miles with two or three trains in each direction daily; however, these are offset to a degree by the fact that certain Amtrak trains only run 3 days a week in each direction on the Company's tracks.

Rather than being a fundamental component of the Company's operations, Amtrak passenger trains are a very minor piece of business for the Company and have very little impact on the operations of a massive railroad operating across almost half of the United States. Thus, it is difficult to argue that our Proposal concerning the operation of a mere 34 trains over the company's 19,500 route miles in 22 states and the District of Columbia would fundamentally affect management's ability to operate our Company on a day-to-day basis.

Indeed, the fact that the tiny fraction of passenger trains operating each day on America's freight railroads has attracted so much litigation and Congressional interest further underscores that our Proposal concerns not a core business operational matter but an important public policy matter worthy of explicit review by our Board of Directors and consideration by our fellow stockholders.

D. The Company's Claim That It Operates In A Highly Regulated Industry Is Misleading

Proponents challenge the Company's claim that freight railroads are highly regulated entities overseen at both the federal and state level. While there is significant safety regulation of freight and passenger railroads, administered primarily by the Federal Railroad Administration, other aspects of freight railroad operations, such as pricing and service, were generally removed from close federal regulation by the Staggers Act which became law in 1980.

The Surface Transportation Board serves an administrative appeals and review function for railroads, shippers and some other transportation modes. Railroads do have significant reporting requirements but are no longer highly regulated in areas outside of safety.

In a normal provider – customer relationship, a customer of the Company would have the option of using other shippers (trucks, in limited instances other railroads, or, in still more-limited instances, air freight). For passenger trains there are only rarely other options. By definition Amtrak trains must run over railroads, and in most situations in the United States there are no parallel or nearby alternate railroads over which to run passenger trains if relations between Amtrak and the Company are poor. Passenger operators are effectively captive shippers.

E. The Proposal And The Federal Preference Clause Apply Only To Amtrak-Operated Trains

The Company's No-Action Request makes references to commuter railroad operations on NS right of way, implying that they play a role in this issue. The Proponents would like to clarify for Staff that our Proposal, as well as 49 U.S.C. § 24308(c), applies only to trains operated by Amtrak.

In the 1970s Amtrak did operate some commuter train service for local agencies, but these much larger commuter operations have generally been taken back and are now operated directly by agencies such as Virginia Railway Express and New Jersey Transit. These commuter rail agencies are responsible for negotiating directly with the Company for the terms of service when using our Company's tracks.

Our Proposal concerns only trains operated by Amtrak; currently 34 on an average day.

CONCLUSION

Rule 14a-8(i)(7) bars exclusion of a shareholder proposal, even if it involves a matter relating to ordinary business operations, if that proposal raises a significant public policy issue and the proposal does not limit management's flexibility to address complex issues. Our proposal centers on the issue of late passenger trains, an issue which in the past decade has been subject to three separate pieces of federal legislation and extensive litigation that has reached the Supreme Court twice in five years. Our proposal requires no specific prescriptions for a solution to the problem of late passenger trains and defers to management's judgment on how to address compliance with the underlying federal law.

The portion of the Company's revenues and operations attributable to Amtrak trains is small enough that any change Management may undertake would have little material effect on the Company's financial position. The Company has not met its burden to demonstrate either that the Proposal in substance restricts management's scope of action or prescribes a particular outcome, nor has the Company demonstrated that there is no connection between the substance of our Proposal and the operations of the Company.

Proponents believe and ask the Commission Staff to accept the fact that material delays in passenger train service on the Company's railroad and other freight railroads is a significant and growing public policy matter with considerable legislative and public interest. We ask that SEC Staff recommend to the Commission an enforcement action if Norfolk Southern Corporation continues to oppose the inclusion of our Proposal in its 2020 annual meeting agenda and proxy material.

Proponents would be happy to answer any questions that the Staff may have. As requested, we have sent Kerry Burke at Covington a copy of our response (via e-mail) and are mailing hard copies to the Commission as requested.

Sincerely,

A handwritten signature in cursive script that reads "Steve Strauss". The signature is written in dark ink and is positioned above the printed name.

Steve Strauss
Lead Proponent

SHAREHOLDER PROPOSAL: TREATMENT OF PASSENGER TRAINS ON NORFOLK SOUTHERN RIGHT OF WAY

WHEREAS, federal law [49 U.S.C. § 24308(c)] requires freight railroads to give priority to Amtrak passenger trains over slower freight trains in dispatching and operations, and

WHEREAS, Norfolk Southern may be eligible for financial incentive payments for any reduction in delays of passenger trains operating over its tracks, and

WHEREAS, the freight rail industry has recently lost an appeal at the United States Supreme Court challenging the right of Amtrak and the Federal Railroad Administration to set on-time performance standards for passenger trains operating on freight railroads, and

WHEREAS, Amtrak has begun posting data on passenger train delays caused by freight railroads with Norfolk Southern ranking in the lowest quartile of the rankings, and

WHEREAS, passenger train riders and advocates are among the strongest allies of the freight rail industry in its competition with the trucking industry,

BE IT RESOLVED, that the shareholders of Norfolk Southern Corporation request that the Board of Directors of our company review our compliance with 49 U.S.C. § 24308(c) and develop a program to reduce delays to passenger trains operating on our right of way so long as the passenger train is made available by Amtrak in the time slot scheduled for it.

Supporting Statement:

Federal law requires, and good public relations should encourage, our company to keep Amtrak trains on schedule when operating in NS territory. Unfortunately for passenger train riders this has not recently been the case. In 2018 Amtrak rated Norfolk Southern's performance in delivering Amtrak trains and customers on time as dead last among the Class I railroads.

<https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/Amtrak-2018-Host-Railroad-Report-Card.pdf>

As shareholders we believe this situation has resulted in unflattering publicity for the corporation, put us at risk of civil penalties for violation of federal law and irritated and inconvenienced thousands of train riders who generally are very supportive of freight railroads on public policy issues. Late trains also force Amtrak and taxpayers to spend additional money on overtime and back-up trains. We think management can fix this problem at little cost in terms of time and money from our freight business and may gain incentive payments from Amtrak.

If you agree please vote YES on this resolution.

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BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
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December 20, 2019

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Shareholder Proposal to Norfolk Southern Corporation

Ladies and Gentlemen:

On behalf of Norfolk Southern Corporation (the “*Company*”), we are submitting this letter pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”), to notify the Securities and Exchange Commission (the “*Commission*”) of the Company’s intention to exclude from the proxy materials for its 2020 annual meeting of shareholders (the “*2020 Proxy Materials*”) a shareholder proposal (the “*Proposal*”) submitted by Steve Strauss (the “*Proponent*”). We also request confirmation that the staff of the Division of Corporation Finance (the “*Staff*”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2020 Proxy Materials for the reasons discussed below.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are emailing this letter to the Staff at shareholderproposals@sec.gov. In addition, we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the 2020 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if he elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal (attached hereto as Exhibit A) provides in pertinent part:

BE IT RESOLVED, that the shareholders of Norfolk Southern Corporation request that the Board of Directors of our company review our compliance with 49 U.S.C. § 24308(c) and develop a program to reduce delays to passenger trains operating on our right of way so long as the passenger train is made available by Amtrak in the time slot scheduled for it.

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BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2020 Proxy Materials pursuant to Rule 14a-8(i)(7) because it relates to the Company's ordinary business operations.

ANALYSIS

A. Background

Rule 14a-8(i)(7) permits the exclusion of shareholder proposals dealing with matters relating to a company's "ordinary business operations." The Commission has stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Exchange Act Release No. 34-40018* (May 21, 1998)(the "1998 Exchange Act Release"). The term "ordinary business" in this context refers to "matters that are not necessarily 'ordinary' in the common meaning of the word, and is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." *Id.* In the 1998 Exchange Act Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first, and relevant consideration here, is that certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis" that they could not be subject to direct shareholder oversight. The second related to the "degree to which the proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

When examining whether a proposal may be excluded under the "ordinary business" standard, it is also critical to determine whether the proposal raises any significant social policy issue. If the proposal focuses on a "significant social policy issue," the proposal "generally would not be excludable, because the proposal would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." *Exchange Act Release No. 34-12999* (Nov. 22, 1976)(the "1976 Exchange Act Release"). Conversely, a proposal that does not rise to the level of a "significant social policy issue," but rather focuses on those tasks that are integral to management's ability to run the day-to-day business of a company, may properly be excluded pursuant to Rule 14a-8(i)(7). *Id. See also Staff Legal Bulletin No. 14E* (Oct. 27, 2009)("SLB 14E").

The Company, through its principal operating subsidiary Norfolk Southern Railway Company, is primarily engaged in freight rail transportation of raw materials, intermediate products, and finished goods, operating approximately 19,500 route miles primarily in 22 states and the District of Columbia. As disclosed in the Company's Form 10-K for the Company's fiscal year ended December 31, 2018 (the "2018 Form 10-K"), the Company directs rail traffic ("dispatches") and operates freight service over lines with significant ongoing Amtrak and commuter passenger operations, and conducts freight operations over trackage owned or leased by Amtrak and certain state transportation authorities. In addition, as disclosed in the 2018

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Form 10-K, the Company is subject to significant government legislation and regulation over commercial, operating and environmental matters related to the Company's operation of its rail lines. The management of the Company's rail transportation business, including dispatching trains moving over its rail lines, setting appropriate schedules for the Company's freight trains, and ensuring the Company is in compliance with various government legislation and regulations, is an integral part of the Company's business and fundamental to management's ability to oversee the operations of the Company.

The Proposal and the Proposal's supporting statement (the "*Supporting Statement*") clearly focus on two integral parts of the Company's ordinary business operations: (i) compliance with legal and regulatory requirements and (ii) decisions concerning the Company's customer relations. Decisions regarding what services to provide customers, and how to provide them, so as to be in compliance with various government regulatory requirements and a customer's desired satisfaction level involve operational and business issues that require the judgment of the Company's management, which has the necessary skills, knowledge and resources to make informed decisions on such matters and are part and parcel of the Company's ordinary business.

B. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Relates to the Conduct of the Company's Legal Compliance Program

As noted above, the Proposal and the Supporting Statement implicate the Company's compliance with legal and regulatory requirements. Specifically, the Proposal requests that the Company's board of directors (the "*Board*") review the Company's compliance with a specific federal statute, 49 U.S.C. § 24308(c), which provides as follows:

Preference Over Freight Transportation.— Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the [U.S. Surface Transportation] Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the [U.S. Surface Transportation] Board for relief. If the [U.S. Surface Transportation] Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the [U.S. Surface Transportation] Board shall establish the rights of the carrier and Amtrak on reasonable terms.

The Staff has consistently taken the position that proposals relating to a company's legal compliance program relate to ordinary business matters and are excludable under Rule 14a-8(i)(7). For example, in *JPMorgan Chase & Co.* (Mar. 13, 2014), the Staff allowed exclusion of a proposal requesting that the board evaluate opportunities for clarifying and enhancing implementation of board members' and officers' fiduciary, moral and legal obligations to shareholders and other stakeholders. The company argued that fiduciary obligations, legal obligations, and "standards for directors' and officers' conduct and company oversight" are governed by state law, federal law, and New York Stock Exchange listing standards. The Staff concurred with the Company's omission of the proposal, noting that "[p]roposals that concern a company's legal compliance

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program are generally excludable under rule 14a-8(i)(7).” In addition, in *General Electric Co.* (Jan. 4, 2005), the proposal requested a report detailing whether NBC’s broadcast television stations’ activities met public interest obligations. The company argued the proposal infringed on a core management function, i.e., the general conduct of the company’s legal compliance program. The Staff agreed and granted exclusion of the proposal under Rule 14a-8(i)(7). Further, in *Halliburton Co.* (Mar. 10, 2006), the Staff permitted exclusion of a proposal requesting a report evaluating the potential impact of certain violations and investigations on the company’s reputation and stock price, as well as the company’s plan to prevent further violations as “relating to [the company’s] ordinary business operations (i.e., general conduct of a legal compliance program).” *See also Navient Corp.* (Mar. 26, 2015)(permitting exclusion of a proposal under Rule 14a-8(i)(7) that requested a report on the company’s internal controls over its student loan servicing operations, including a discussion of the actions taken to ensure compliance with applicable federal and state laws, as concerning the company’s “legal compliance program”); *Sprint Nextel Corp.* (Mar. 16, 2010) (permitting exclusion of a proposal requesting an explanation as to why the company had not adopted an ethics code that would promote ethical conduct and compliance with securities laws by its chief executive officer and noting that proposals seeking “adherence to ethical business practices and the conduct of legal compliance programs” are generally excludable under Rule 14a-8(i)(7)); and *H&R Block Inc.* (Aug. 1, 2006) (permitting exclusion of a proposal seeking implementation of a legal compliance program with respect to lending policies).

As reported in the 2018 Form 10-K, in addition to environmental, safety, securities, and other regulations, the Company’s rail operations are subject to commercial regulation by the U.S. Surface Transportation Board (“STB”) concerning, among other things, rates, routes, customer access provisions, fuel surcharges, conditions of service and the extension or abandonment of rail lines. The Company’s management maintains, monitors and dedicates substantial resources to ensuring compliance with federal and state laws and regulations and views monitoring the legal and regulatory developments in each of these areas as a fundamental part of its ordinary business operations. The Company also is committed to improving the fluidity of its rail network, which it believes benefits both Amtrak and its freight customers. To do so, the Company is focused on execution of its new operating plan and principles of precision scheduled railroading. New train dispatchers on lines with Amtrak trains are also instructed on the statutory preference obligation. The Company’s practices to ensure compliance with laws and regulations governing the Company’s business, including determination of the appropriate means by which to comply with such laws, are fundamental elements of management’s responsibility for the day-to-day operation of the Company’s business and cannot, as a practical matter, be subject to direct shareholder oversight. The Company operates in an industry with both a commercial regulator – the STB – and a safety regulator – the Federal Railroad Administration - and the Company’s management is in the best position to determine if, and when, a review of the Company’s legal compliance program is necessary. Consistent with the no-action letters cited above the Proposal deals with the conduct of the Company’s legal compliance program, an ordinary business operation, and therefore, is excludable under Rule 14a-8(i)(7).

C. The Proposal is Excludable under Rule 14a-8(i)(7) Because It Relates to the Company’s Customer Relations

The information provided in support of the Proposal makes it clear that the Proposal

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relates to matters concerning customer service and satisfaction. For example, the Supporting Statement provides that “*good public relations* should encourage . . . our company to keep Amtrak trains on schedule when operating in [the Company’s] territory.” [emphasis added]. In addition, the Supporting Statement states “[a]s shareholders we believe this situation has resulted in *unflattering publicity* for the [Company], put[s] [the Company] at risk of civil penalties for violation of federal law and *irritated* and *inconvenienced* thousands of train riders...” [emphasis added]. The Proposal recites, “passenger train riders and advocates are among the strongest allies of the freight rail industry in its competition with the trucking industry.” Accordingly, the Proposal also is excludable under Rule 14a-8(i)(7) because it deals with matters “fundamental to management’s ability to run a company on a day-to-day basis,” specifically the Company’s relationship with Amtrak and Amtrak’s customers.

The Staff has consistently permitted exclusion of proposals under Rule 14a-8(i)(7) when implementation of a proposal would involve shareholders in a company’s operations involving customer relations. For example, in *Wells Fargo & Company* (Feb. 27, 2019), the proposal requested that the board commission an independent study to enhance fiduciary oversight of matters relating to customer service and satisfaction. The company argued that the proposal related to the company’s relations with its customers and concerned “matters relating to customer service and satisfaction.” The Staff agreed and permitted exclusion of the proposal under Rule 14a-8(i)(7) “as relating to the [c]ompany’s ordinary business operations. In this regard, we note the proposal relates to decisions concerning the [c]ompany’s customer relations.” Similarly, in *Ford Motor Co.* (Feb. 13, 2013), the proposal requested that the company review certain dealership performance and remove those dealers that are inept at repairing vehicles and show poor customer service. The Staff permitted exclusion of the proposal under Rule 14a-8(i)(7) indicating that proposals “concerning customer relations are generally excludable under Rule 14a-8(i)(7). *See also Coca-Cola Co.* (Jan. 21, 2009)(proposal requested a report evaluating new or expanded policy options to further enhance transparency of information to consumers of bottled beverages and “boost consumer confidence,” excludable under Rule 14a-8(i)(7) because the proposal related to the company’s marketing and customer relations); and *Dean Foods Co.* (Mar. 9, 2007)(permitting exclusion of a proposal under Rule 14a-8(i)(7) that expressed concern that the company’s brand image and shareholder value were threatened by customer concerns and media coverage of an entity’s boycott of the company’s dairy products and requested that an independent committee review the company’s policies and procedures for its dairy products, because the proposal related to the company’s customer relations).

Similar to the no-action letters cited above, the Proposal is concerned with the perceived reputation of the Company in connection with delays of passenger trains operating over its tracks and the impact of that reputation on the Company’s relationship with Amtrak and its customers. In addition to the language from the Supporting Statement referenced above, the Supporting Statement provides that “[i]n 2018 Amtrak rated [the Company’s] performance in delivering Amtrak trains and customers on time as dead last among the Class I railroads.” The Proponent goes on to provide that “[l]ate trains also force Amtrak and taxpayers to spend additional money on overtime and back-up trains. We think management can fix this problem at little cost in terms of time and money from our freight business and may gain incentive payments from Amtrak.” The Proposal seeks certain oversight of the Company’s relationship with Amtrak because of “unflattering publicity” and the need for “good public relations” due to scheduling delays to

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passenger trains operating on the Company's rail lines. However, the Staff has consistently recognized that decisions related to customer relations are fundamental to management's ability to run the Company and are not an appropriate matter for shareholder oversight. Determining how best to manage the Company's relationship with Amtrak and its customers, including how to perform contractual obligations that arise from this relationship, is one of management's most fundamental responsibilities and falls squarely within the Company's ordinary business operations. Accordingly, consistent with the no-action letters cited above, the Proposal is excludable under Rule 14a-8(i)(7).

D. The Proposal Does Not Focus on Issues that Transcend the Ordinary Business Matters Upon Which the Proposal Focuses

As noted in the 1976 Exchange Act Release and in SLB 14E, a proposal generally will not be excludable under Rule 14a-8(i)(7) if the underlying subject matter transcends the day-to-day business of the company and raises policy issues so significant that the proposal would be appropriate for a shareholder vote. However, as discussed throughout this request, the Proposal relates to tasks that are integral to management's ability to run the day-to-day business of the Company: (i) compliance with legal and regulatory requirements and (ii) decisions concerning the Company's customer relations. Each of these are critical parts of the Company's day-to-day business and operations, and the Proposal's underlying subject matter, i.e., reducing delays in passenger trains operating on the Company's rail lines, does not focus on a significant policy issue that transcends the Company's ordinary business or its day-to-day operations. Accordingly, the Proposal is excludable under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2020 Proxy Materials. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Any such correspondence should be sent to Kerry S. Burke at kburke@cov.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 662-5297.

Very truly yours,

Kerry S. Burke

cc: Virginia K. Fogg, Norfolk Southern Corporation
Krista J. McAninley, Norfolk Southern Corporation
Steve Strauss

Steve Strauss

November 17, 2019

RECEIVED
NOV 21 2019

Ms. Denise W. Hutson
Corporate Secretary
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

Dear Mr. Hutson:

On behalf of myself, and three additional shareholders, we wish to file the enclosed shareholder resolution for inclusion in the 2020 proxy statement and consideration at the Annual Meeting of NS shareholders.

The enclosed shareholder proposal for inclusion in the 2020 proxy statement is in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. I am the beneficial owner, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, of 250 shares of Norfolk Southern stock and have owned these shares for more than one year.

I will continue to be an investor through the stockholder meeting. A representative of the filers will attend the stockholders' meeting to move the resolution as required by SEC rules. I will serve as the lead filer on behalf of this shareholder group. The names and addresses of the co-filers are also enclosed for your review.

Sincerely,



Steve Strauss

Enclosures

SHAREHOLDER PROPOSAL: TREATMENT OF PASSENGER TRAINS ON NORFOLK SOUTHERN RIGHT OF WAY

WHEREAS, federal law [49 U.S.C. § 24308(c)] requires freight railroads to give priority to Amtrak passenger trains over slower freight trains in dispatching and operations, and

WHEREAS, Norfolk Southern may be eligible for financial incentive payments for any reduction in delays of passenger trains operating over its tracks, and

WHEREAS, the freight rail industry has recently lost an appeal at the United States Supreme Court challenging the right of Amtrak and the Federal Railroad Administration to set on-time performance standards for passenger trains operating on freight railroads, and

WHEREAS, Amtrak has begun posting data on passenger train delays caused by freight railroads with Norfolk Southern ranking in the lowest quartile of the rankings, and

WHEREAS, passenger train riders and advocates are among the strongest allies of the freight rail industry in its competition with the trucking industry,

BE IT RESOLVED, that the shareholders of Norfolk Southern Corporation request that the Board of Directors of our company review our compliance with 49 U.S.C. § 24308(c) and develop a program to reduce delays to passenger trains operating on our right of way so long as the passenger train is made available by Amtrak in the time slot scheduled for it.

Supporting Statement:

Federal law requires, and good public relations should encourage, our company to keep Amtrak trains on schedule when operating in NS territory. Unfortunately for passenger train riders this has not recently been the case. In 2018 Amtrak rated Norfolk Southern's performance in delivering Amtrak trains and customers on time as dead last among the Class I railroads.

<https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/Amtrak-2018-Host-Railroad-Report-Card.pdf>

As shareholders we believe this situation has resulted in unflattering publicity for the corporation, put us at risk of civil penalties for violation of federal law and irritated and inconvenienced thousands of train riders who generally are very supportive of freight railroads on public policy issues. Late trains also force Amtrak and taxpayers to spend additional money on overtime and back-up trains. We think management can fix this problem at little cost in terms of time and money from our freight business and may gain incentive payments from Amtrak.

If you agree please vote YES on this resolution.