

August 12, 2020

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

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

Dear Ms. Countryman:

On behalf of DIRTT Environmental Solutions, an interior construction company that uses proprietary software to design and manufacture fully customizable environments, I am writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

We believe that the SEC's proposal, which would allow 89 percent of current 13F filers to go dark, would significantly impair engagement with our institutional investors about our business strategy and corporate governance, reduce our ability to attract new investors, deprive us of timely information about activist funds that take significant positions in our stock, and exacerbate short-term pressures on our company at the expense of long-term shareholder value.

While we agree that the SEC should modernize its ownership disclosure rules, we believe that the Commission's arbitrary 35-times increase in the 13F threshold is not justified by the modest cost savings for investors. The 13F proposal is entirely inconsistent with the measured approach the SEC has applied to economic thresholds in other recent rulemakings, such as the Commission's inflation-based increase in the gross revenue cap for emerging growth companies,¹ the adjustments to the transition thresholds for

¹ Inflation Adjustments and Other Technical Amendments Under Titles I and II of the JOBS Act, Release Nos. 33-10332; 34-80355; File No. S7-09-16 (March 31, 2017).

companies that exit accelerated filer status and large accelerated filer status,² and the proposed updates to SEC's rules on shareholder resolutions.³

We do not believe that the Commission has adequately considered the potential impact of this 13F proposal on public companies and their obligation to confer regularly with their investors. As a sub US\$150 million market cap company, we are particularly concerned about how the reduction of 13F transparency would impair our ability to identify our most active shareholders and engage effectively with them. We estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow 6 of our top 12 investors, representing approximately 30% of our outstanding shares, to evade disclosure. For our company and many others, it is the 13F data from the active investment managers and hedge funds under the \$3.5 billion threshold that is far more valuable.

While 13F data is not as timely it could be, it is only data available to us that shows which "street name" investors are buying or selling their shares each quarter. This data cannot be replaced by hiring stock surveillance firms, which themselves rely on quarterly 13F data as a starting point for their research efforts and represent a meaningful incremental cost to emerging growth companies.

The loss of this essential 13F data also would impede our company's ability to attract new investors. Like many other small-cap issuers, we use 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of our outreach efforts to prospective investors. Both of these practices are essential for a company to effectively access the capital markets and to grow its business. The loss of transparency around who is buying our shares each quarter would hinder the ability of our company to continue to raise growth capital. As required by the agency's mission, the SEC should fully consider the negative impact on capital formation before proceeding with this rulemaking.

Our company also uses 13F data to allocate the limited time of our senior executives among the many requests that we receive from investors for one-on-one calls or meetings. We cannot possibly say yes to every investor request to speak with our CEO, so we try to give priority to our largest investors, shareholders who have increased their positions, fund managers with a track record of activism, and new investors.

As a company in the midst of a strategic transformation to position for long term growth, the loss of 13F data will also expose us to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that we slash jobs, reduce research spending,

² Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 2020) (the SEC increased the threshold for exiting accelerated filer status by 20 percent from \$50 million to \$60 million, while the threshold for exiting large accelerated filer status increased by 12 percent from \$500 million to \$560 million).

³ Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, File No: S7-23-19 (Nov. 5, 2019) (The Commission proposed to increase the minimum economic threshold for shareholder resolutions from \$2,000 to \$25,000, but would mitigate the impact of that change on small investors by allowing them to use the \$2,000 threshold if they continuously hold a company's shares for at least three years.)

increase share buybacks, or take other measures that may not be in the interest of our long-term investors. Proxy contests can be a costly distraction, so many public companies (especially small and mid-cap issuers) often conclude that they have no choice but to settle with short-term activists. Market observers expect another surge in proxy fights after the Covid-19 pandemic subsides (as there was after the financial crisis of 2008-09), so the timing of the SEC's reduction of 13F transparency would be especially unfortunate for companies and long-term investors.

Without the 13F data we receive now, our company will not know if a pack of activist fund managers (who fall under the \$3.5 billion threshold) are plotting a proxy contest until 10 days after one of those funds crosses the 13D disclosure threshold and publicly surfaces with a 5 percent (or often more) position. Having been involved with a US based activist fund in 2018, prior to becoming an SEC registrant, visibility into their ownership and opportunity for engagement could have made a meaningful difference in the substantial time and financial resources invested in arriving at a resolution.

For the foregoing reasons, we request that the Commission withdraw these proposed 13F amendments and instead pursue the common-sense reforms detailed in rulemaking petitions submitted by National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance, and Nasdaq.⁴ Rather than reduce market transparency, we urge the SEC to modernize 13F by cutting the archaic 45-day reporting period, requiring the public disclosure of short positions, and supporting monthly disclosure by 13F filers.

Sincerely,



Charles R. Kraus
Senior Vice President,
General Counsel & Corporate Secretary
Canada: 403-689-3494
USA: 817-964-4697
Email: ckraus@dirtt.com

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