



September 15, 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 Koppers Holdings Inc. (NYSE: KOP) (“Koppers”), a leading integrated global provider of treated wood products, wood treatment chemicals, and carbon compounds headquartered in Pittsburgh, PA, I am writing to express opposition to the proposed amendments to the Form 13F reporting rules for institutional investment managers as published by the Securities and Exchange Commission (the “SEC”) in Release No. 34-89290.

We believe that the enactment of the SEC’s proposal, which we estimate would eliminate Form 13F filing obligations for approximately 90 percent of current Form 13F filers, would result in a significant loss of valuable market transparency to Koppers and other publicly traded companies in the United States. The proposed rule, if enacted, would impair our ability to engage with many of our shareholders, impede our ability to attract new long-term investors, and deprive us of timely information about activist hedge funds that take equity positions in Koppers.

Form 13F filings are the principal and most accurate source of ownership information available to U.S. public companies. While the information contained in Form 13F filings ideally would become available to companies in a more timely manner than is currently the case, we must rely on that information to determine which of our “street name” investors are transacting in our securities in a given quarter. This information cannot be fully replaced with information provided by third-party stock surveillance firms, which themselves rely on the information contained in quarterly Form 13F filings as a starting point for their research efforts.

We do not believe that the SEC has adequately considered the potential impact of this proposal on publicly traded companies like Koppers and their ability to make informed decisions regarding communications with investors in the ordinary course. Like most publicly traded companies, we particularly are concerned about how the reduction of transparency that would

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result from the implementation of the proposed amendments would impair our ability to identify our most active shareholders and engage effectively with them. We estimate that the proposed increase in the Form 13F threshold to \$3.5 billion would allow approximately 75 percent of our current investors which file Form 13Fs to evade disclosure.

While some of our largest investors would continue to make Form 13F filings if the proposed amendments are enacted, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For Koppers and many other similarly situated public companies, the information that we obtain from Form 13F filings made by active investment managers and hedge funds under the proposed \$3.5 billion threshold is much more valuable.¹

Reduced Engagement Due to Lack of Transparency

As one would expect, most public companies, especially those with relatively unconcentrated shareholder bases, regularly are inundated with requests from known and purported shareholders for calls or meetings with senior executives. Koppers, like many public companies, uses Form 13F data to prioritize these requests and allocate the limited time of its senior executives among the many requests for one-on-one calls or meetings. No public company reasonably can accommodate every such request that it receives. The most effective way to manage these requests in the manner that best advances the long-term interests of shareholders is to give priority not only to our largest investors and fund managers with a track record of activism but also to shareholders with smaller positions who are interested in increasing their holdings in Koppers and maintaining those positions in the long-term. With this proposed increase in the Form 13F filing threshold, we would have significantly less visibility into this important group and would be impaired in our ability to advance this important objective.

Negative Impact on Capital Formation

The reduction in Form 13F data also would impede the ability of companies like Koppers to attract new long-term institutional investors. Like many other issuers, Koppers uses Form 13F

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

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filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of its outreach efforts to prospective investors. Both of these practices are essential for companies like Koppers to access capital markets effectively and to grow their businesses. Under the proposed threshold, the loss of transparency around who is holding and buying securities each quarter would hinder the ability of public companies to continue to compete for and raise growth capital. As required by the agency’s mission, the SEC should fully consider the impact on capital formation before proceeding with this rulemaking.

Increased Risk of Activism

The SEC’s proposal also is at odds with recent requests by the SEC that public companies “provide as much information as is practicable” to investors amid the market uncertainty caused by the global COVID-19 pandemic.² Just as there is a need for public companies to provide greater transparency to investors under the current circumstances, the need for the type of ownership data currently provided by Form 13F filings is even greater for public companies during these uncertain times, when market volatility is high and many activist investors have taken advantage of share price declines to amass larger stakes in potential target companies. Under the proposed \$3.5 billion threshold, companies like Koppers would be limited in their ability to monitor activist investors who would be exempt from reporting their positions in Form 13F filings, thus “gaming the system” and using the increased lack of transparency to further their own interests that may be very different from the interests of shareholders as a whole.

The reduction in information that would be available from Form 13F filings if the proposed amendments are implemented potentially exposes public companies to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that companies eliminate jobs, reduce research funding, increase share buybacks, or take other measures that may not be part of the particular company’s long-term strategy or the investment strategy of its long-term investors. According to Activist Insight, 2019 was a record year for activism, as 470 U.S. companies were

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

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

Without the scope of data currently received from Form 13F filings, public companies such as Koppers will not know if an activist fund manager that falls under the \$3.5 billion threshold is plotting a proxy contest until 10 days after the fund crosses the disclosure threshold to file a Schedule 13D and publicly discloses its ownership position of five percent or more.

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

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

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

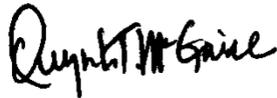
⁵ Inflation Adjustments and Other Technical Amendments Under Titles I and II of the JOBS Act, Release Nos. 33-10332; 34-80355; File No. S7-09-16 (March 31, 2017).

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

For the foregoing reasons, we request that the SEC withdraw its proposed Form 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by National Investor Relations Institute ("NIRI"), the NYSE Group, the Society for Corporate Governance, and Nasdaq.⁸ Rather than reduce the transparency currently available to public companies through Form 13F filings, we urge the SEC to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and reducing the current 45-day reporting period.

Regards,



Quynh T. McGuire
Vice President, Investor Relations
Koppers Holdings Inc.

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

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

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