



September 17, 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 RPM International Inc. (NYSE: RPM), a diversified company headquartered in Medina, Ohio, with subsidiaries that are world leaders in specialty coatings, sealants, building materials and related services, I am writing to express our strong opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

We believe that the Commission's proposal, which would allow nearly 90 percent of current Form 13F filers to avoid reporting, would result in a significant loss of market transparency to publicly traded companies and their investors. The proposed rule, if enacted, would impair our engagement with stockholders, impede our ability to attract new long-term investors, and deprive us and the public of timely information about ownership positions taken by activist hedge funds. Furthermore, without such reporting, activist hedge funds could be empowered to make unsubstantiated claims about their ownership positions in an attempt to advance the activists' own agendas at target companies.

Form 13F filings are the only accurate source of ownership information available to us and other U.S. issuers. While Form 13F data is not as timely as it could be, it is the only data that we have that shows which "street name" investors are buying or selling our shares each quarter. This information cannot be fully replaced by hiring stock surveillance firms, who themselves rely on quarterly Form 13F data as a starting point for their research efforts.

We do not believe that the Commission has adequately considered the potential impact of this Form 13F proposal to our company and many others like us who regularly confer with their investors throughout the year. We are particularly concerned about how the reduction of Form

13F transparency would impair our ability to identify our most active stockholders and engage effectively with them. While some of our largest investors would continue to disclose shares held, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our company and many others, it is Form 13F data from the active investment managers and hedge funds (who would most likely no longer be reporting under the proposed \$3.5 billion threshold) that is more valuable.<sup>1</sup>

Our company uses Form 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 try to give priority not only to our largest investors and fund managers with a track record of activism, but also to those stockholders with smaller positions who are interested in increasing their holdings in our company. With the proposed 35-fold increase in the Form 13F threshold, we would have far less insight into how to prioritize our time among such investors. Also, we generally solicit feedback from our stockholders, but our ability to do so would be severely impaired if we no longer have the Form 13F data that helps us know who our stockholders are in the first place.

The Commission's proposal to significantly reduce Form 13F disclosures also is at odds with recent requests by the Commission that we and other public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global Covid-19 pandemic.<sup>2</sup> Just as we are expected to provide transparency to our investors, we expect disclosure of ownership data for our large investors, and our need for it is even greater 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, we would be unable to monitor those activist investors who would be exempt from reporting their positions, using the increased lack of transparency for their benefit and not that of our company's long-term stockholders.

The loss of Form 13F data under the proposed rule potentially exposes our company to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that we

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<sup>1</sup> 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>.

<sup>2</sup> 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.

eliminate jobs, close facilities, sell valuable assets, or take other measures that may not be part of our long-term strategy or the investment strategy of our long-term investors. According to Activist Insight, 2019 was a record year for activism as 470 U.S. companies were targeted and 95 proxy contests were launched.<sup>3</sup> Many corporate advisers are warning companies to prepare for another surge in activism after the pandemic subsides, so the timing of the Commission's proposed reduction of Form 13F transparency would be especially unfortunate for companies and their long-term investors.<sup>4</sup>

We believe that the negative impacts of this Form 13F proposal on our company's ability to engage effectively with our stockholders, attract new long-term investors, and detect potential activists, far outweigh the modest cost savings for investment managers. The proposed 35-fold increase in the Form 13F threshold is entirely inconsistent with the incremental approach the Commission has taken when adjusting economic thresholds in other rules, such as the Commission's inflation-based increase in the gross revenue cap for emerging growth companies,<sup>5</sup> the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,<sup>6</sup> and the proposed updates to Commission's rules on stockholder resolutions.<sup>7</sup>

For the foregoing reasons, we request that the Commission withdraw its proposed Form 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance,

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<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> 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).

<sup>6</sup> Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 2020) (the Commission 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).

<sup>7</sup> 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 holding requirement for stockholder 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.)

and Nasdaq.<sup>8</sup> Rather than reduce Form 13F transparency, we urge the Commission to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and reducing the 45-day reporting period.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward W. Moore". The signature is fluid and cursive, with the first name "Edward" being the most prominent.

Edward W. Moore  
Senior Vice President, General Counsel  
and Chief Compliance Officer

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<sup>8</sup> 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>.