



September 22, 2020

Via email to rule-comments@sec.gov

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 Veritiv Corporation (NYSE: VRTV), a leading North American business-to-business distributor of packaging, facility solutions, print and publishing products and services, headquartered in Atlanta, Georgia, we are writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

We believe the SEC's proposal would result in a significant loss of market transparency for our company and other publicly traded companies in the United States. The proposed rule, if enacted, would impair our engagement with shareholders, impede our ability to attract new long-term investors and deprive us of timely information about activist hedge funds that may take a position in our stock.

Practically speaking, 13F filings are the only accurate source of ownership information available to our company as well as many other U.S. issuers. While 13F data is not as timely as it could be, it is the only data 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, which themselves rely on quarterly 13F data as a starting point for their research efforts. Moreover, full-time stock surveillance comes at a significant cost, one our company and others similarly situated would rather not incur.

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We do not believe the Commission has adequately considered the potential impact of this 13F proposal to our company and our obligation to regularly confer with our investors throughout the year. As a small 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 the proposed increase in the 13F reporting threshold to \$3.5 billion would allow a significant portion of our current 13F filers to evade disclosure. While most of our largest investors would continue to disclose shares held, many of these institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our company and many others, it is the 13F data from the active investment managers and hedge funds under the proposed \$3.5 billion threshold that is more valuable.¹

Reduced Engagement Due to Lack of Transparency

We try to give priority to not only our largest investors and fund managers with a track record of activism, but also those shareholders with smaller positions who are interested in increasing their holdings in our company. With this proposed increase in the 13F threshold, we would not have visibility into this important investor group.

Increased Risk of Activism

The Commission's proposal to significantly reduce 13F disclosures is also at odds with recent requests by the SEC 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.² Just as there is a need for greater transparency on our part to our investors, our need for ownership data 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, thus "gaming the system" and

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>.

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.

using the increased lack of transparency for their benefit and not that of our company's long-term shareholders.

The loss of 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 eliminate jobs, increase share buybacks, 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.³ Many corporate advisers are warning companies to prepare for another surge in activism in 2021-22 after the pandemic subsides (as there was after the financial crisis of 2008-09), so the timing of the SEC's proposed reduction of 13F transparency would be especially unfortunate for companies and long-term investors.⁴

Without the 13F data we receive now, our company 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 13D disclosure threshold and publicly surfaces with a 5 percent (or often more) position.

Cost-Benefit Imbalance

While we agree that the SEC should modernize its ownership disclosure rules, we believe the negative impacts of this 13F proposal on our company's ability to engage effectively with our shareholders, attract new long-term investors, and detect potential activists would far outweigh the modest cost savings for investment managers. The proposed 35-fold increase in the 13F reporting threshold is not consistent with the incremental approach the SEC 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,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).

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

For the foregoing reasons, we request the Commission withdraw its proposed 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, and Nasdaq.⁸ Rather than reduce 13F transparency, we urge the SEC to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and cutting the 45-day reporting period.

Should you have any questions regarding this letter, please feel free to reach out to either of us at the telephone numbers and email addresses listed below. Thank you for your consideration.

Very truly yours,



Mark W. Hianik
SVP & General Counsel

[Redacted]
[Redacted]



Stephen J. Smith
SVP & Chief Financial Officer

[Redacted]
[Redacted]

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 Commission 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>.