CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

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

Dear Secretary Countryman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the Securities and Exchange Commission's ("SEC") proposed rule ("Proposal") to update the threshold for Form 13F reports by institutional investment managers ("IIMs").

Under current rules, an IIM must complete Form 13F if they exercise investment discretion over 13(f) securities – as defined under the Exchange Act – of more than $100 million in aggregate fair market value. While the Chamber shares the desire to review and update existing regulation, we must oppose the Proposal, which would increase the reporting threshold for Form 13F to $3.5 billion. We are concerned that a change in the reporting threshold would significantly reduce transparency and inhibit communication between companies and their investors.

Background

According to the Proposal, Form 13F was adopted to address "certain gaps in information about the purchase, sale and holdings of securities by major classes of institutional investors."[1] Moreover, three goals were established for the Form 13F disclosure program: (1) the creation of a central repository of historical and current data about investment activities of IIMs; (2) improving data available regarding

[1] Release No. 34-89290; File No. S7-08-20, page 8. https://www.sec.gov/rules/proposed/2020/34-89290.pdf

holdings of IIMs; and (3) increasing investor confidence in the integrity of the U.S. security markets.[2]

The Proposal further recognizes that the usefulness of Form 13F data has expanded beyond the original intent, which was for regulators and the public to better understand "the effects of institutional equity ownership on the markets."[3] Today, a wide variety of market participants, researchers, academics, and investors, among others, rely on Form 13F data.

Importance of Form 13F Transparency to Market Participants

CCMC's mission is to advance America's global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative in the world. Just recently in July, we commended the SEC for finalizing its reforms to proxy advisory firms. We specifically cited, among other benefits, a greater promotion of transparency as a result of the final rule.

As the SEC reports in the Proposal, today more than 5,000 managers file Form 13F reports. However, the number of 13F filers would plummet to 550 with a threshold increase to $3.5 billion. This means that equity ownership data from approximately 89 percent of current Form 13F filers would be lost to both investors and companies.

Accordingly, CCMC is deeply concerned about this Proposal's impact on institutional equity ownership transparency for corporations, market participants, and investors. CCMC urges the SEC against modifying the Form 13F threshold as it would lead to less transparency to the detriment of the U.S. capital markets. Form 13F is an integral tool by which corporations, investors, and other market participants can track equity ownership by institutional investors. Moreover, the data derived from Form 13F quarterly reporting is the only accurate means to track equity ownership by institutional investors.

Corporations utilize Form 13F data to monitor on a quarterly basis who is buying and selling their shares. By tracking ownership of their shareholders, businesses can gain important insights into trading patterns, institutional ownership composition, and stock volatility. Among the insights sought, for example, a company will want to understand the distribution of its investors. Whether they are growth or value

[2] Release No. 34-89290; File No. S7-08-20, page 9.
[3] Release No. 34-89290; File No. S7-08-20, page 22.

investors, for instance, will help inform a corporation about the appeal of a company's investment story. Furthermore, the volume and timing of stock transactions have implications for both corporations and investors about stock volatility. Corporations will seek to evaluate whether there is high turnover of the holding, or if investors are transacting as part of a short- or long-term strategy. Such data is also important in enabling corporations to determine if activist investors are accumulating positions. Through these various insights, corporations are then able to effectively engage and share this important intelligence with their shareholders and determine ways to improve upon their outreach to shareholders and potential investors.

Form 13F data also helps investment managers in managing assets. For example, the data allows for the efficient and confidential targeting of investors, such as for IPO testing the waters meetings. The filings also allow brokers to better allocate transactions to long-term investors, as holdings can be monitored after capital markets transactions.

The data from Form 13F reports is equally important to shareholders as they assess their return on investment and investment strategy. Investors benefit from the information conveyed by Form 13F reports about their equity holdings. The communication that occurs between a shareholder and a corporation and/or investment manager is vital in enabling investors to make informed and confident decisions.

Potential Consequences of Less Transparency

The Proposal would reduce the level of decision-useful information in the stock market. The loss of this important data would have numerous detrimental consequences to the stakeholders who value this information. We believe that instead of adopting these changes to 13F the SEC should continue to embrace principles of transparency that have guided its recent rulemakings on proxy advisory firms and shareholder proposals.

First, reduced visibility into stock ownership could invite threats from activist investors. A recent report found that 86 percent of activist investors would no longer be required to file Form 13F reports.[4] Although the SEC believes that the new threshold would provide meaningful relief for small IIMs, many of what the SEC

[4] IHS Markit, SEC's 13F Proposal – Issuer and Investor Analysis, https://ihsmarkit.com/research-analysis/secs-13f-proposal--issuer-and-investor-analysis.html

considers smaller investment managers can nonetheless hold meaningful positions in companies. By allowing activist investors to avoid Form 13F reporting, a corporation may not become aware of a threat until it is too late to act in defense.

Second, a reduction in transparency may negatively impact meaningful investor communications. Should this Proposal move forward, we are concerned that a corporation's communications to its shareholders would be less effective. Corporations and other financial stakeholders, such as asset managers and brokers, would be hampered and seriously challenged in communicating key information to investors about institutional holdings. Additionally, corporations would be challenged in most effectively managing competing investor requests for engagement of Investor Relations Officers (IROs), the C-suite, and directors. Companies would also be less able to discern the objectives of certain shareholders that may be accumulating large positions. With less Form 13F information available, many corporations and other financial stakeholders would need to hire or develop additional resources to be able to maintain an effective dialogue with investors.

Third, CCMC is concerned about the potential impact of this Proposal to the capital markets. For example, we expect an increased risk of market signaling to the largest investors that can piece together a mosaic when multiple brokers are seeking feedback and competing for specific opportunities.

It is clear from these potential consequences that the Proposal does not meet the goals established by the SEC in creating Form 13F. A decrease of almost 90 percent of Form 13F reporting neither supports the concept of a central repository of data nor does it improve the body of data regarding holdings of IIMs. In addition, the loss of vital data and associated consequences to investor communications, capital markets, and activist investors would weaken investor confidence.

CCMC also questions whether other sources can replace the data that would be lost by the proposed threshold change to Form 13F reporting. The Proposal asserts that "alternative sources of holdings data…either exist or are being developed and may provide overlapping or similar data to that included on Form 13F,"[5] citing N-PORT and the consolidated audit trail ("CAT") as examples. However, the data derived from the Form 13F quarterly reporting is currently the only accurate means to track equity ownership by institutional investors. The Form 13F stream of data cannot be replicated using N-PORT since its universe of filers is much smaller than the universe

[5] Release No. 34-89290; File No. S7-08-20, page 24.

of Form 13F filers. Further, the CAT is a repository of data that doesn't fully exist; however, even if it does become fully operational, that data would only be available to the SEC and self-regulatory organizations for analysis.

Conclusion

We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

Tom Quaadman