

September 28, 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:

The undersigned individuals, who are the leadership of the Cleveland/Northern Ohio Chapter of the National Investor Relations Institute (NIRI), are writing on behalf of the chapter, to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules (Reporting Threshold for Institutional Investment Managers, Release No. 34-89290; File No. S7-08-20).

We represent members who are investor relations officers at publicly held companies headquartered in the Cleveland/Northeast Ohio area. These companies, listed on the New York Stock Exchange and Nasdaq, have a combined market capitalization approaching \$200 billion. We also represent investor relations counselors who advise public companies in our area and across the country.

The Commission's proposal, which would raise the reporting threshold to \$3.5 billion, 35 times greater than the current threshold of \$100 million, would allow almost 90 percent of current 13F filers to go dark. This higher threshold would result in a significant loss of market transparency to our members' companies as well as other public companies in Northeast Ohio and the United States. The proposed rule, if enacted, would impair engagement with shareholders, impede companies' ability to attract new long-term investors, and deprive our members of timely information about activist fund managers that take positions in their companies.

We do not believe that the SEC has adequately considered the potential impact of this rulemaking proposal on our members' companies and their obligation to regularly engage with their investors throughout the year. The 13F filings can be the only accurate source of ownership information available to our members' companies as well as other U.S. public companies. While 13F data is not as timely as it could be, it is the only data that companies have that shows which "street name" investors are buying or selling their shares each quarter. This data cannot be replaced by hiring stock surveillance firms, at a sizable fee, which themselves rely on quarterly 13F data as a starting point for their research efforts.

While the proposal cites as a benefit the reduced burden for smaller asset managers, the reality is that technology advancements in the years since the 13F rule was issued make reporting

markedly easier and have lessened the burden to the point it would not be unreasonable for these firms to report weekly, if not daily. To no longer require reporting of activity for funds below \$3.5B introduces an opaqueness to the markets that does not serve anyone well. As our markets, and trading itself, become more complex with the evolution of technology and financial instruments, we need more transparency of information, not less.

Many of our chapter members work for (or advise) small- and mid-cap issuers, which typically have a higher percentage of shares owned by investment managers who would fall under the proposed \$3.5 billion threshold. These smaller companies also have fewer resources to devote to stock surveillance and investor targeting, so they would be especially impacted by the 13F proposal. The Commission should fully evaluate the potential harm to smaller companies and capital formation before proceeding with this rulemaking.

We also agree with Commissioner Allison Herren Lee, who has expressed concern that the proposed 13F amendments would reduce transparency and the public's access to market information. She also questioned whether the SEC "has the authority to pursue" those changes by pointing out that the "enabling statute, at section 13(f)(1), provides no support for increasing the reporting threshold."^{1 2}

While our members agree that the SEC should modernize its ownership disclosure rules, we believe that the negative impacts of this proposed 13F rulemaking on the ability of Investor Relations Officers to engage effectively with their shareholders, attract new long-term investors, and monitor activists far outweigh any potential cost savings for investment managers. In addition, the proposed 35-fold increase in the 13F threshold is not consistent with the incremental approach the SEC has taken when adjusting economic thresholds in other rules.

For the above reasons, we ask the Commission to withdraw the proposed 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by the National Investor Relations Institute, the NYSE Group, Nasdaq, and the Society for Corporate

¹ As Commissioner Lee pointed out in her dissenting statement: "To the contrary, the relevant text provides: Every institutional investment manager . . . which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) . . . having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 *or such lesser amount* (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter (emphasis added). The text is clear: Congress set a statutory reporting threshold at \$100 million, and the Commission has the authority to lower it. Commissioner Allison Herren Lee, "Statement on the Proposal to Substantially Reduce 13F Reporting," July 10, 2020, available at: <https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10>.

² Congress has expressed a clear intent for institutional investment managers to provide more disclosure, rather than less transparency. Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 directed the Commission to require 13F filers to report short positions each month, while Section 951 of Dodd-Frank instructed the SEC to require 13F filers to annually disclose their votes on executive compensation matters.

Governance.³ Rather than reduce transparency, we urge the SEC to promote more timely and complete disclosure by working with Congress to support monthly reporting, require the public disclosure of short positions, and reduce the outdated 45-day reporting period.

To achieve these objectives, we urge the Commission to convene a public roundtable to hear the views of retail shareholders, institutional investors, issuers, and the exchanges on a wide range of market transparency issues, including potential 13F reforms, proposed rules to address “short and distort” abuses, and the modernization of 13D reporting.⁴ We believe that such a roundtable would result in more thoughtful rulemaking proposals that would increase transparency, promote engagement, protect retail investors, and foster public company capital formation.

Sincerely,

/s/

Cleveland/Northern Ohio Chapter Co-Presidents:

Angela Rodenhauser, Senior Vice President, Dix & Eaton

Julie Winter, Senior Director, Investor Relations & Corporate Communications, STERIS

/s/

Chapter Advocacy Ambassadors:

Shannon Gaycheck, Vice President, Sales, Toppan Merrill

Christina Kmetko, President, Evergreen Consulting & Associates, LLP

Lisa Rose, President, Dix & Eaton

Cc: Ted Allen, Vice President, Communications and Member Engagement, NIRI
The Honorable Sherrod Brown, U.S. Senate
The Honorable Rob Portman, U.S. Senate
The Honorable Marcia L. Fudge, U.S. House of Representatives
The Honorable Marcy Kaptur, U.S. House of Representatives
The Honorable Anthony Gonzalez, U.S. House of Representatives
The Honorable David P. Joyce, U.S. House of Representatives
The Honorable Tim Ryan, U.S. House of Representatives

³ 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>.

⁴ See Professors John C. Coffee, Jr. and Joshua Mitts *et al.*, Petition for Rulemaking on Short and Distort, Petition No. 4-758 (February 12, 2020), available at: <https://www.sec.gov/rules/petitions/2020/petn4-758.pdf>; Wachtell, Lipton, Rosen & Katz, Petition for Rulemaking on Schedule 13D of the Securities and Exchange Act of 1934, Petition 4-624 (March 7, 2011), available at: <https://www.sec.gov/rules/petitions/2011/petn4-624.pdf>.