



National Investor Relations Institute
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May 5, 2021

The Honorable Maxine Waters
Chairwoman
U.S. House Committee on
Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
U.S. House Committee on
Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

Subject: “Virtual Hearing – Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III”

Dear Chairwoman Waters and Ranking Member McHenry:

The National Investor Relations Institute (“NIRI”), whose members include 2,800 investor relations professionals who represent more than 1,350 public companies and \$7 trillion in stock market capitalization, is pleased to support the “Capital Markets Engagement and Transparency Act of 2021,” which would modernize the Section 13(f) ownership disclosure rules.

In 1975, Congress passed Section 13(f) of the Securities Exchange Act to increase the public availability of information regarding securities held by large investment managers. Lawmakers believed that these institutional disclosures would increase investor confidence in the integrity of U.S. capital markets. Current Securities and Exchange Commission (“SEC”) rules require investment managers with at least \$100 million in assets to disclose their share ownership positions within 45 days after the end of each calendar quarter, through a Form 13F filing. An exception is permitted for those managers that ask the SEC to delay these disclosures on the basis of confidentiality.

Unlike companies in the United Kingdom and other international markets, U.S. companies do not have access to a share registry that lists all their investors. For this reason, companies in this country rely on the data contained in institutional 13F filings to learn which investment managers own their shares and the size of their positions. Similarly, both institutional and retail investors rely on these filings to monitor developments in the capital markets and to make investment decisions.

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While the U.S. capital markets have evolved significantly since 1975, the 13(f) disclosure rules have not been modernized. In their current form, they have become outdated and serve as a barrier to the receipt of timely information by investors and public companies.

Since the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, U.S. companies have faced a surge in requests from investors for engagement on corporate governance, executive compensation, sustainability, and long-term strategy. However, the outdated 13F reporting rules have been a significant impediment to better corporate-investor engagement, because public companies do not have timely information on their investors' positions when trying to allocate scarce CEO or director time among competing investor requests for meetings or calls.

Neither investors nor public companies are well served by the current quarterly reporting frequency. Under the current 13F regime, much of the ownership information in Form 13F filings is out-of-date by the time that investment managers make those quarterly filings. For some public companies, a majority of their shares may change hands during the 135-day period that includes the last calendar quarter and the 45-day reporting window.

In July of last year, the SEC issued a hastily prepared proposal to increase the threshold for filing 13F reports by *35 times*, from \$100 million in assets to \$3.5 billion in assets. This proposal would have exempted 89 percent of current 13F filers from disclosure and significantly reduced transparency around hedge fund activism. Retail shareholders, institutional investors, public companies, and industry associations (including NIRI)¹ submitted thousands of comments in opposition to this proposal. In their comment letters, many companies explained how they use 13F data to identify new investors, prioritize governance engagement efforts, and monitor hedge fund activists. Companies and investors also argued that the SEC should have sought to *expand* ownership transparency by reducing the 45-day reporting period and expanding disclosure to include short and derivative positions.

The recent collapse of Archegos Capital Management is further evidence of the need to modernize the Form 13F disclosure rules to include cash-settled equity swaps and other derivative transactions. Archegos used total return swaps to take significant positions in public companies that were not disclosed to those companies, the SEC, or other investors. When Archegos imploded and was forced to unwind these positions quickly, a number of companies, including ViacomCBS and Discovery Inc., experienced steep declines in their share prices. NIRI

¹ See, e.g., NIRI Comment Letter Re Reporting Threshold for Institutional Investment Managers, Release No. 34-89290; File No. S7-08-2, August 28, 2020, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7709057-222930.pdf>

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shares the concerns of former Delaware Chief Justice Leo Strine Jr.,² Americans for Financial Reform,³ and other investors who have urged the SEC to improve transparency around derivative transactions.

Given the limits on the SEC's authority imposed by Section 13(f), NIRI believes that meaningful reform to the 13(f) reporting rules will require legislation. NIRI fully supports the Capital Markets Engagement and Transparency Act of 2021, which includes long-overdue reforms to enhance market transparency for the benefit of investors and companies. The bill would: (1) shorten the Form 13F filing deadline from 45 days to *five business days*; (2) improve the timeliness of 13F disclosures by requiring *monthly* disclosure instead of quarterly reporting; (3) require that 13F filers disclose their short positions; (4) require the disclosure of derivative positions that are substantially equivalent economically to direct ownership of a 13F security; and (5) direct the SEC to complete a study of its current standards for granting confidential treatment requests to investment managers who wish to delay specific 13F disclosures.

Thank you for the opportunity to present the views of NIRI regarding modernization of the Form 13F rules. If any Committee members or staff want to discuss these issues in greater detail with NIRI, please contact Niels Holch, NIRI's Vice President for Public Policy and Advocacy, at (202) 624-1461 or via email at nholch@niri.org.

Sincerely,



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² See *The Wall Street Journal*, "Executives Wonder if Their Stock Selloffs Were Linked to Archegos," April 21, 2021, available at: https://www.wsj.com/articles/executives-wonder-if-their-stock-selloffs-were-linked-to-archegos-11618997403?mod=hp_lead_pos4.

³ See Americans for Financial Reform, Letter to Acting Chair Allison Lee, March 31, 2021, available at: https://ourfinancialsecurity.org/wp-content/uploads/2021/03/Letter-to-SEC_-Needed-Hedge-Fund-Reforms-in-the-wake-of-Archegos.pdf.