September 11, 2018

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

File No. 4-689: Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934 (also file 4-659);
File No. 4-691: Rulemaking Petition to Require Disclosure of Short Positions

Dear Mr. Fields:

The undersigned individual, who serves as the President of the National Investor Relations Institute (NIRI) Dallas-Fort Worth Chapter (DFW Chapter), hereby writes to you and your colleagues on behalf of the members of the DFW Chapter in support of the aforementioned rulemaking petitions submitted by NYSE Group, Inc. and NIRI on October 7, 2015, and submitted by Nasdaq, Inc. on December 7, 2015.

The members of the NIRI DFW Chapter are investor relations officers and counselors, who advise publicly held companies, primarily headquartered in Texas and the surrounding states. Our letter represents support from 14 companies listed on the New York Stock Exchange and the NASDAQ Exchange with a combined market capitalization of $64.4 billion. They include Cinemark, D.R. Horton, Darling Ingredients, Fluor Corporation, Forterra, Lindsay Corporation, Martin Midstream, MasTec, Range Resources, Tyler Technologies and Vistra Energy among others.

<u>1. Improve short-position disclosure by institutional investment managers</u>

As corporate and counselor members of NIRI, we join the NYSE Group and Nasdaq in urging the Securities and Exchange Commission to promulgate rulemaking pursuant to Sections 10 and 13 of the Securities and Exchange Act of 1934, and Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to: [1] require the periodic public disclosure of short-sale activities by institutional investment managers, and [2] require institutional investment managers to publicly disclose their short positions.

We are pleased to note that since 2015, when the petitions captioned above were filed, members of the U.S. Congress as well as 15 public companies and the Biotech Innovation Organization urged the Commission to adopt a short position disclosure rule. There have been growing demands from industry groups for the SEC to act on this issue. As an example, we highlight the fact that short disclosure was one of the recommendations included in the April 2018 report, *"Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public"* issued by a diverse coalition of eight business organizations, including the U.S. Chamber of Commerce, Nasdaq, Sifma, and TechNet. Furthermore, at the SEC's annual Government Business Forum on Small Business Capital Formation, the short position disclosure mandate was ranked as the 7th (2016) and the 11th (2017) most important recommendations by participants, and the 3rd (2016) and 5th (2016) most important recommendations by the 'Smaller Reporting Companies Breakout Group'.

Respectfully, we urge the SEC to implement Section 929X of the Dodd-Frank Act, given the recent groundswell of support for short-selling disclosure requirements, as well as the distress over the potential negative impact of "short and distort" campaigns on newly public companies. We believe the unchecked "short and distort" attacks are curtailing new IPOs in the United States. Fundamentally, we believe that implementation of Section 929X and other rulemaking efforts would help ensure that there is "sufficient public information about potential market manipulation," as called for by the April 2018 report referred to *supra*.

We agree with the NYSE Group, Nasdaq, and a growing number of public companies that there is a serious gap in the regulation of short sellers related to their disclosure obligations. Requiring the disclosure of short positions would help prevent market manipulation and other abusive trading practices. We agree with and support the proposition that transparency is the best way to combat damaging trading behaviors and that a disclosure regime for short sellers would shine light on the motivations of short sellers, while providing valuable information to issuers and other investors. Furthermore, a short disclosure rule would greatly help the Commission, which has limited enforcement resources, police market abuses and other potential fraudulent conduct.

Public disclosure of short-sale activity would also help issuers and other investors better analyze market movements in traded equity securities. While we now utilize the aggregate short-sale data provided by the exchanges to evaluate the market and anticipate developments with respect to our securities, we do not know who is shorting the shares of our companies. This leaves us with a critical gap in that we are unable to initiate meaningful dialogue with short sellers unless they choose to surface publicly. The very inability to engage short-sellers is not only prejudicial to issuers, but also other investors, especially individual investors, who are often taken by surprise and lack access to the information necessary to make appropriate investment decisions.

For decades, investment managers who hold long positions have been subject to quarterly Section 13(f) disclosure obligations, but these investment managers are not required to disclose their short-selling activities. This lack of transparency deprives companies of insights into

trading activity and limits their ability to engage with investors. We concur with the comments of Dr. James J. Angel, Associate Professor of Finance at Georgetown University, in his comment letter that it "is illogical and inconsistent" to make investment managers disclose only their long positions but not short positions. Likewise, as Nasdaq argued its 2017 "Promise of Market Reform" report, "the asymmetry of information between long investors and those with short positions deprives companies of insights into trading activity and limits their ability to engage with investors and it deprives investors of information necessary to make meaningful investment decisions."

The *current lack of transparency around short positions hurts retail/individual shareholders*, who typically do not have access to the same information resources as institutional investment managers and are more likely to be misled by misinformation about a company. If long and short investors are required to disclose their positions on a periodic basis, all market actors, including individual investors, would have more information to help them make better informed trading decisions. Many of our members have received frantic calls from retail investors who were alarmed by the impact of short campaigns on their stock holdings. These retail investors assumed that the companies would know who the short-traders behind those attacks are and were highly distressed to learn otherwise.

Other global markets, including the United Kingdom, France, Spain, and the European Union, have adopted rules that require institutions to report net short positions to regulators and to the public.

As other commenters, including three US Senators, have noted, this gap in disclosure increases the risk of short-selling abuses that are harmful to U.S. companies, their investors, and employees. These abuses can drive down the value of growing companies and leave them with less capital for hiring workers, investing in R&D, or providing dividends to their shareholders.

2. Shorten the 45-day period for 13(f) filers to report long positions to 15 days, expand required disclosure to include short positions, and increase reporting frequency to monthly.

We also support the 2013 rulemaking petition (File No. 4-659) submitted by NIRI, the NYSE Group, and the Society of Corporate Secretaries and Governance Professionals (now known as the Society for Corporate Governance) urging the SEC to shorten the current 45-day period for 13(f) filers to report their long positions. Investors, issuers, regulators, and other market participants all would benefit from modernizing the 13(f) rules, last amended in 1979, to require short position disclosure as well as timelier reporting of long positions. We also believe that month-end reporting with a 15-day period for 13(f) filers to report their long and short positions is equitable and doable at marginal cost.

U.S. public companies now operate in an environment of great transparency governed by stock exchange rules and federal and state regulations. While Congress and the Commission have accelerated various corporate deadlines (Forms 4, 8-K, 10-K, and 10-Q) to ensure that investors receive more timely information, the 13(f) reporting rules have not been updated, leaving a detrimental gap in market transparency.

Given the advances in recordkeeping and reporting technologies in the more than 30 years since the 13(f) reporting requirements were first adopted, there is no practical reason why institutions cannot provide public disclosure of their short positions as well as more current information on their long holdings.

Increasing the frequency of reporting of 13(f) filers from quarterly to monthly and shortening the current 45-day period to 15 days is highly reasonable, given the advances in reporting technologies since 1979.[1] Today, issuers have no other source of public information as to who holds their stock, either long or short, other than the 13(f) filings. Currently, by the time this information is made available to issuers, it is untimely and inaccurate with regard to most institutional holdings.

Given the desire of investors to access management promptly, we believe that <u>all</u> public companies have the fundamental right to know who holds their shares, either long or short, in a timely manner, which we believe should be within at 15-day window.

Furthermore, more frequent reporting is necessary due to increased passive trading. In many cases, there is no communication between an investor and the issuer prior to a position being taken and therefore, being able to identify new investors in a timely manner is critical to ensure prompt investor engagement.

Summary

We join our parent organization, NIRI, the NYSE Group, Nasdaq, and other organizations in urging the SEC to take prompt action to promulgate disclosure requirements for short sellers, while modernizing the long-position requirements. Furthermore, we urge the SEC to exercise greater oversight over proxy advisors who are impacting the market in a fundamental way.

We posit that once the rules as outlined above are proposed, institutional investors, public companies, and other market participants could offer their views on how these regulations should be revised to address any concerns while still carrying out the SEC's mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

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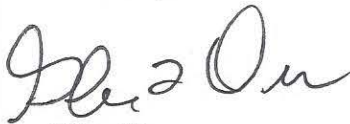
[1]While SEC officials have indicated that changing the reporting frequency to monthly would require a statutory change, we encourage the Commission to support such a change to Section 13(f) to ensure that the 13(f) disclosure regime reflects the realities of today's markets and provides greater transparency for the benefit of both issuers and investors.

If you have any questions, or if any of the undersigned can provide any additional information that would be helpful to the Commission or its staff, please feel free to contact us at your convenience.

Thank you for taking the time to peruse our submission.

Sincerely,



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Cc: Ted Allen, Vice President, Communications and Membership Engagement, NIRI
Senator John Cornyn, Texas
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