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VIA E-MAIL: rule-comments@sec.gov

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

Re: Comments on Proposed Rule on Reporting Threshold for Institutional Investment Managers. Release No. 34-89290; File No. S7-08-20; RIN 3235-AM65

Dear Ms. Countryman,

We respectfully submit this letter in response to the solicitation by the U.S. Securities and Exchange Commission for comments on the proposed rule for updating the reporting threshold for Form 13F reports by institutional investment managers. The Commission is proposing to raise the threshold from $100 million to $3.5 billion, effectively exempting the vast bulk of current reporting filers.

The motivation for the amendment reflects a desire to eliminate both the compliance and the indirect costs for the "smaller" investment managers, and the proposed new threshold is set to capture the change in size and structure of the U.S. securities market since 1975, when the disclosure rule was introduced. We believe that the analysis that leads to this proposal is fundamentally misleading and omits key effects of the visibility of institutional investment managers. Some of these effects are not directly related to the increased size of the U.S. securities market, but rather reflect aspects of the governance mechanisms of U.S. corporations. We highlight important weaknesses of the current analysis and outline missing factors that ought to be considered.

1. A key motivation for the amendment is to save the compliance costs of the smaller investment managers. We believe, like other academics and market observers, that the SEC overestimates these costs. Most importantly, even if the estimates were accurate, compliance costs would still be nearly trivial in relation to the economic impact of market participants losing visibility over $2.3 trillion assets. Compliance costs therefore ought to play a minor role on the design of a new threshold.

2. An amendment to the current threshold should follow form a cost-benefit analysis of the effects of altering the visibility of the portfolios of investment managers. The Commission argues that increasing the threshold would save front-running and copycatting costs for smaller managers, which could trade profitably on their private information. This is a sensitive insight, although arguably incomplete.

3. The gross benefits of preventing front-running and copycatting can be measured by the value of the information that investment managers may generate once they can internalize the profits of trading on it. However, the associated market opacity comes at a cost. Other less informed investors, typically small and dispersed, know that they will be potentially trading against better informed investment managers which they are no longer able to track. This lack of visibility therefore reduces the profitability of their investment, their incentives to invest, and ultimately the formation of capital.

4. The visibility of investment managers' positions is particularly relevant for activist hedge funds and their target companies. The increased size of some U.S. corporations and the sophistication of activist campaigns has led many activists to never cross the 5% 13D disclosure threshold. Consequently, many companies only know of the positions of activist funds before their campaigns because of the 13F fillings. Raising the disclosure threshold to $3.5 billion would enable most activists to conceal their positions further, thus making bigger profits and ultimately engaging in more campaigns.

5. Activist funds serve an important disciplining role and, on average, improve the value of their target companies. While an increase in hedge fund activist campaigns might therefore be desirable, the potential benefits nonetheless ought to be weighed against the costs of the market opacity that enables them, i.e., of the loss of visibility of informed investors and the potential reduction in capital formation by less informed investors (point 3).

6. The above suggests that the optimal threshold should balance the marginal benefits of reduced disclosure (higher threshold) in terms of managerial disciplining induced by greater hedge fund activism, against the marginal costs in terms of reduced capital formation by less informed investors.

7. Determining the optimal threshold is complicated, and optimal policy is necessarily nuanced. However, we believe that a 35-fold increase in the reporting threshold may increase the profits of activist funds far more than necessary to provide incentives to perform their monitoring role. The benefits of the new threshold would therefore be outweighed by the cost of other investors being discouraged from taking positions because they are at an informational disadvantage, depressing equity prices, and potentially impairing the ability of companies to raise capital.

Key arguments above are formally developed in our Warwick Economic Research Paper No:1203, titled "Blockholder Disclosure Thresholds and Hedge Fund Activism".[1] We would be happy to elaborate further if this would be useful. We can be reached via the contact details at the top of this letter.

Yours sincerely,

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[1] Available on https://warwick.ac.uk/fac/soc/economics/research/workingpapers/2019/twerp_1203_bernhardt.pdf