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August 10, 2020

Ms. Vanessa A. Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090  
[rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

Dear Ms. Countryman:

On behalf of Q4 Inc, a provider of technology and market intelligence services to the investor relations community headquartered in Toronto with offices in New York City and London, I am writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

Q4 is a technology leader servicing more than 2,000 U.S.-listed public companies representing almost \$18 trillion of market value. In addition to a comprehensive technology platform that includes website hosting and analytics, IR-related events hosting (such as quarterly earnings) through conference calls, webcasting and video, and a capital markets database/Customer Relationship Management application, Q4 also provides a best-in-class equity surveillance service that allows clients to understand who may be buying and/or selling their stock, and what may be driving price movement. Our key relationships reside with both Investor Relations and Chief Financial Officers of each corporate issuer, providing us a valuable perspective on this proposal. Based on extensive analysis and discussions with many of the most well-known companies in the world, we strongly believe that the proposed amendment would reduce transparency around holdings, increase the risk of activism, undermine issuer-investor engagement, and negatively impact our customer's ability to effectively identify attractive potential investors.

**Reduced Transparency**

Based on our analysis as of July 27, 2020, all Q4 clients receiving our equity surveillance services would be impacted by this proposal. The average percentage of outstanding shares that would be affected is 12%, with a maximum of 52%. For those at the upper end of this range, it effectively removes the issuer's ability to identify and confirm ownership of more than half of their

shareholders. We consider this significant loss of visibility as a material step backwards in market transparency, an initiative explicitly mentioned in the Dodd-Frank Act, and one the SEC has historically sought<sup>[1]</sup>. This rulemaking would exempt 4,500 (89 percent of current 13F filers) from disclosure, including many hedge funds and active money managers who would fall under the proposed \$3.5 billion threshold. In today's market where many of the largest shareholder positions are held by passive ETF managers, a reduction in visibility of active investment management is not in anyone's best interest.

### **Increased Risk of Activism**

During these uncertain times, the need for ownership data is substantially increased. Today's volatile markets present opportunities to activists to build sizable positions when share prices decline precipitously. Under the proposed \$3.5 billion threshold, our clients would be unable to monitor activists who would be exempt from reporting their positions, potentially "gaming the system" through use of complex derivative instruments and using the increased lack of transparency for their benefit. This is counter to the long-term timeline that companies invest by, and that which shareholders measure value creation.

The loss of 13F data under the proposed rule also exposes companies to the risk that short-term-oriented fund managers may demand that issuers eliminate jobs, reduce research funding, cut investment in infrastructure, or take other measures that may not be part of the issuer's long-term strategy or the investment strategy of well-aligned, long-term investors. According to Activist Insight, 2019 was a record year for activism as 470 U.S. companies were targeted and 95 proxy contests were launched.<sup>[2]</sup> Many corporate advisers are warning companies to prepare for another surge in activism in 2021-22 after the pandemic subsides (as there was after the financial crisis of 2008-09), so the timing of the SEC's proposed reduction of 13F transparency would be especially unfortunate for companies and long-term investors.<sup>[3]</sup>

Without the 13F data we receive now, we will be unable to alert our clients if an activist fund manager that falls under the \$3.5 billion threshold is plotting a proxy contest until 10 days after the fund crosses the 13D disclosure threshold and publicly surfaces with a 5 percent (or often more) position. This is particularly concerning and may lead to costly and distracting proxy battles rather than cultivating an open dialog between management and interested parties.

### **Shareholder Engagement**

We also believe that this proposal would seriously jeopardize a corporate issuer's ability to effectively allocate the company's most precious resource - executive time. Q4 assists its customers in determining how to best allocate management's time to the investment community. 13F data is instrumental in these decisions concerning which bank conferences, one-on-one calls or meetings to

participate in. Since executive time is a finite resource, issuers must give priority to not only large holders, but smaller shareholders who may increase their positions in the future. Again, **more than 5,000 investment managers – or nearly 90% of all filers – would be exempt from this important reporting mechanism.** With this proposed increase in the 13F threshold, companies would lose visibility into this important group, thereby harming a small investor's ability to access corporate management teams.

### **Shareholder Identification**

Finally, identification of, and engagement with, potential investors would be severely restricted with this proposal. No longer would an issuer be able to understand the trends and themes that a smaller fund or firm may focus on. No longer would an issuer be able to identify investment managers who are allocating capital to the space where they reside. In short, the loss of 13F data for investment firms would impede our client's ability to identify and attract new long-term institutional investors. Like most issuers and service providers, Q4 uses 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of outreach efforts to prospective investors. Both of these practices are essential for our clients to effectively access the capital markets and to grow their business. Under the proposed threshold, the loss of transparency around who is holding as well as buying their shares each quarter would hinder their ability to compete for and raise growth capital. As required by the agency's mission, the SEC should fully consider the impact on capital formation before proceeding with this rulemaking.

While we agree that the SEC should modernize its ownership disclosure rules, we believe that the negative impacts of this 13F proposal on our customer's ability to engage effectively with their shareholders, attract new long-term investors, and detect potential activists would far outweigh the modest cost savings for investment managers. 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, such as the Commission's inflation-based increase in the gross revenue cap for emerging growth companies,<sup>[4]</sup> the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,<sup>[5]</sup> and the proposed updates to SEC's rules on shareholder resolutions.<sup>[6]</sup> Adjusted for inflation, the value of the US dollar has quintupled. Perhaps consider applying the same math to this threshold.

In closing, we ask that the Commission reconsiders the proposed rule, and instead refocus its efforts on the modernization of the 13F disclosure regime to improve transparency. Those efforts could include shortening the reporting delay from 45 days currently, increasing the frequency to monthly, and/or including both long and short positions. Any of these would align well with your stated goal of increasing market transparency. The importance of effective shareholder identification and

engagement is more important than ever, and this proposal would be a tremendous misstep at a time when shareholders are increasingly calling for greater transparency. As such, we urge the Commission to withdraw this proposal.

Sincerely,



Darrell Héaps  
Founder and CEO  
Q4 Inc.

[1] As Chairman Jay Clayton and Corporation Finance Director William Hinman observed, “The SEC’s three-part mission -- maintain market integrity, facilitate capital formation, and protect investors -- takes on particular importance in times of economic uncertainty. Disclosure — providing the public with the information necessary to make informed investment decisions — is fundamental to furthering each aspect of our mission. . . . We urge companies to provide as much information as is practicable regarding their current financial and operating status, as well as their future operational and financial planning.” Chairman Jay Clayton and William Hinman, Director, Division of Corporation Finance, "The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19," April 8, 2020.

[2] See Lisa Silverman, Bloomberg Law, "Insight: Preparing for Post-Pandemic Corporate Activism," May 4, 2020, available at:  
<https://news.bloomberglaw.com/corporate-governance/insight-preparing-for-post-pandemic-corporate-activism>.

[3] See, e.g., Q4 Blog, "Activism in the Post-Pandemic Market: What You Need to Know," May 12, 2020, available at: <https://q4blog.com/2020/05/12/activism-in-the-post-pandemic-market-what-you-need-to-know/>; Frank Aquila and Melissa Sawyer, Sullivan & Cromwell, *Corporate Secretary*, “How boards can prepare for post-pandemic activism,” April 6, 2020; available at: <https://www.corporatesecretary.com/articles/boardroom/32040/how-boards-can-prepare-post-pandemic-activism>.

[4] Inflation Adjustments and Other Technical Amendments Under Titles I and II of the JOBS Act, Release Nos. 33-10332; 34-80355; File No. S7-09-16 (March 31, 2017).

[5] Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 2020) (the SEC increased the threshold for exiting accelerated filer status by 20 percent from \$50 million to \$60 million, while the threshold for exiting large accelerated filer status increased by 12 percent from \$500 million to \$560 million).

[6] Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, File No: S7-23-19 (Nov. 5, 2019) (The Commission proposed to increase the minimum holding requirement for shareholder resolutions from

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\$2,000 to \$25,000, but would mitigate the impact of that change on small investors by allowing them to use the \$2,000 threshold if they continuously hold a company's shares for at least three years.)