WHALEWISDOM

September 29, 2020

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Reporting Threshold for Institutional Investment Managers (File No. S7-08-20)

Dear Ms. Countryman:

WhaleWisdom[1] appreciates the opportunity to provide its views on the SEC's proposal to update the reporting threshold for Form 13F reports by institutional investment managers, as well as make certain other changes to the Form.

We are in a unique position to comment on the proposal. WhaleWisdom was built around the belief that there are significant benefits to be gained from transparency of information regarding the holdings of institutional investment managers. As such, we created an online resource for 13F-related information and have been serving a wide variety of market participants who rely on the data for a number of different uses. Adoption of the proposal will directly impact WhaleWisdom.

While WhaleWisdom supports efforts by the Commission to modify rules that have placed unnecessary burdens on firms, as discussed further below, we believe that the proposal would create more harm than good. Specifically, the proposal overall is counter to the intent of the original legislation enabling Section 13(f), the proposal would reduce important transparency into the securities markets, there is no viable alternatives for the Form 13F data that would be eliminated by the proposal, and the proposed adjustments to the reporting threshold would be detrimental to ensuring confidence in our securities markets. For these reasons, we oppose adoption of the proposal.

Our specific comments and recommendations follow.

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[1] WhaleWisdom was founded in 2008. We provide information to assist investors and other market participants to more easily navigate the information about the holdings of institutional investment managers. For more information about WhaleWisdom, visit https://whalewisdom.com/.

I. Uses of 13F Data

As the Release notes, since Form 13F data became publicly available, different uses for the data have developed, and the pool of users of the data has expanded beyond just regulators and the public to include academics, market researchers, the media, attorneys pursuing private securities class action matters, and market participants themselves who use the data to enhance their ability to compete. As the Release also points out, Form 13F data can assist individuals in making investment decisions, investment managers in managing assets, and corporate issuers of 13(f) securities interested in determining the beneficial holders of their publicly traded stock. Together, these uses serve a significant purpose in the economy and the efficient functioning of the markets.

WhaleWisdom interacts with all of these types of users and in speaking with them regarding the proposal, we have not heard for calls for reform of the current reporting threshold. Most significantly, investors have told us that they are concerned that they will lose access to certain 13F data that is not otherwise available for assistance in trading decisions and performing due diligence. Equally important, users that are potential and current clients of an investment manager have expressed concerns that they will not have access to the data WhaleWisdom produces to verify methodology claims or to see if a particular fund is taking on more risk than claimed, *e.g.*, to identify drifts in investment style.

We have heard the same concerns from our other clients: academics (using data for market research and modeling in papers and other studies); media (for reporting on the movements of particular holders of an investment or to analyze the performance of stock picks); law firms (for use in class action litigation in order to identify eligible claimants); and issuers (to identify who their shareholders are, particularly smaller cap issuers).

II. The Proposal Would Run Counter to the Primary Goals of Section 13(f)

WhaleWisdom will focus its comments on the aspect of the proposal that would amend Rule 13f-1 and Form 13F to raise the threshold for reporting specified equity securities on Form 13F from $100 million to $3.5 billion. As the Commission notes in the proposing release, the Section 13(f) disclosure program had three primary goals: (1) to create a central repository of data about the investment activities of institutional investment managers; (2) to improve the data available regarding the holdings of institutional investment managers and therefore facilitate consideration of the influence and impact of such managers on the securities markets; and (3) to increase investor confidence in the integrity of the U.S. securities markets.

We believe raising the reporting threshold as contemplated by the proposal runs counter to all of these goals.

A. The Proposal Would Eliminate Important Transparency into the Markets

The SEC has regularly emphasized the importance of transparency of market information across a wide variety of initiatives and has rightfully continued to advocate for the availability of information to investors. The proposal, however, would be detrimental to such transparency and ensuring the creation of a central repository of data about the investment activities of institutional investment managers.

WhaleWisdom shares the concern raised by SEC Commissioner Lee that the proposal "would eliminate access to information about discretionary accounts managed by more than 4,500 institutional investment managers representing approximately $2.3 trillion in assets."[2] While the release notes that the proposal would retain disclosure of over 90 percent of the dollar value of the Form 13F holdings data, we are concerned that the data that would no longer be reported by the thousands of managers with less than $3.5 billion in Section 13(f) securities would have a detrimental impact on the overall transparency of the securities markets and, as discussed further below, would have a particular negative impact on smaller companies.

No Viable Alternative Source Exists for the 13F Data to be Eliminated

Despite claims by the Commission in the release to the contrary, WhaleWisdom believes the loss of nearly 90 percent of institutional investment managers currently filing Form 13F reports cannot be replaced by alternate means. Significantly, N-PORT, 13D and 13G filing types do not apply to most of the managers that would not have to report under the proposal. Based on our calculations, using Q2 2020 data, only 14% of managers that fall below the proposed threshold have filed a 13D or 13G since 2018 and only four have filed an N-PORT. In addition, 13D and 13G filings do not provide nearly as much insight as 13F filings and N-PORT filings are even less timely than 13F filings. We therefore strongly recommend that the Commission provide further information as to the uses by investors of these alternatives and that the Commission clarify how "many" of these alternatives provide overlapping or similar data to that included on Form 13F.

Adding to the impact of the elimination of a significant amount of filings, smaller managers required to file Form 13F can account for a substantial portion of a stock, particularly a small cap stock's share base. The tables below, based on WhaleWisdom calculations, illustrate that once you start looking at smaller issuers, particularly below $1 billion in market cap, the ownership percentage of sub-$3.5 billion managers goes up significantly.

The following table illustrates a breakdown of 13F shares in Q2 2020 by issuer market capitalization:

Market Cap Range	Mgr Over $3.5 billion threshold	Mgr Under $3.5 billion threshold
Over $100B	94%	6%
$50B to $100B	92%	8%
$20B to $50B	91.6%	8.4%
$10B to $20B	89.8%	10.2%
$2B to $10B	87%	13%

[2] SEC Commissioner Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting*, July 10, 2020.

$1B to $2B	81.9%	18.1%
$500M to $1B	75.9	24.1
$250M to $500M	69%	31%
Below $250M	60%	40%

If you restrict this to "active managers"[3] for Q2 2020, the majority of a small-cap stock's share base belongs to sub-$3.5 billion managers:

Market Cap Range	Mgr Over $3.5 billion threshold	Mgr Under $3.5 billion threshold
Over $100B	93%	7%
$50B to $100B	90%	10%
$20B to $50B	88%	12%
$10B to $20B	80.4%	19.6
$2B to $10B	78.5%	21.5%
$1B to $2B	72.5%	27.5%
$500M to $1B	60%	40%
$250M to $500M	53.5%	46.5%
Below $250M	46.4%	53.6%

B. The Proposal Would Damage the Ability to Consider the Influence and Impact of Institutional Investment Managers

The significant reduction of the number of institutional investment managers filing Form 13F will create several difficulties for the ability of market participants to consider the impact of such managers on the markets.

While establishing the new reporting threshold to $3.5 billion may still capture 90 percent of the total dollar value of the Form 13F holdings data, approximately 85 percent of "active managers" fall under the $3.5 billion threshold.[4] A significant amount of information regarding smaller institutional

[3] For example, hedge funds or advisors to a private fund that charge performance based fees with 50% or greater high net worth clients.

[4] Based on Q2 2020 data, this accounts for 1,292 out of 1,519 13F filers that are hedge funds, or an advisor to a private fund that charge performance based fees with 50% or greater high net worth clients.

investment managers that have an outsized impact on the securities markets, such as many hedge funds, would therefore be lost.

Impact on Small Issuers

Issuers, particularly small cap issuers, would be most negatively impacted by the loss of this data. Stocks are often held in "street name," *i.e.*, only the broker knows the stockholders true identity. Issuer clients of WhaleWisdom currently use 13F filings to help find out who their real shareholder base is - this cannot be replicated by alternative means and issuers are now fearful they will be more vulnerable to "ambush" tactics by activists who will now be able to accumulate positions in an issuer just under the 13D five percent threshold without disclosure. We also believe that the proposed increase to the Form 13F reporting threshold will make it significantly more difficult for issuers of all types to identify and communicate with their shareholders (*e.g.*, for proxy and quorum purposes).

From an investment angle, research into smaller issuers also will be negatively impacted by this change. Larger managers typically invest in larger more liquid issuers as smaller cap stocks often do not provide the necessary liquidity for them to move in and out of positions easily. However, smaller cap stocks often are more suitable for smaller managers who don't have the same liquidity requirements. When a respected investor discloses a position in a security, more managers become aware of the stock and do their own research into that stock, leading to further investment. This is especially true of smaller issuers with little to no analyst coverage. Exposure to up-and-coming small cap issuers will especially suffer under the proposal, as well as capital formation overall.

Leveling the Playing Field for Small Investors

Having access to a wide spectrum of active managers' 13F data, despite the limitations of 45-day filing delays and despite only seeing an incomplete picture of a fund's portfolio, provides valuable insight and guidance when making investing decisions. WhaleWisdom believes that access to this data makes all investors better investors. Numerous studies have confirmed the benefits of the use of this type of information.[5] This is particularly important for smaller investors who can glean knowledge from the investing knowhow and acumen of top investment managers who are otherwise out of reach. Many of these managers would be exempt from filing 13F filings under the proposal.

Big data is rapidly changing the way investors find opportunities in the markets. However, rather than creating a level playing field where more readily available information leads to greater market efficiency, the opposite is happening as only those sophisticated investors with the scale and resources to take advantage of the opportunities available will profit.[6] Small investors are being left out of this shift; public disclosure of equity positions by these sophisticated investors can allow the

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[5] *See, e.g.,* "Best Ideas" Anton, Cohen, Polk, Working Paper 21-004, 2020, available at https://www.hbs.edu/faculty/Publication%20Files/21-004_f616ddeb-db44-495b-915a-0b5191d9ccf3.pdf. *See also* Angelini, Iqbal and Jivraj, *Systematic 13F Hedge Fund Alpha* (October 3, 2019), available at http://wp.lancs.ac.uk/fofi2020/files/2020/04/FoFI-2020-090-Farouk-Jivraj.pdf.

[6] *See, e.g.,* "On the Capital Market Consequences of Alternative Data: Evidence from Outer Space," July 30, 2018. "*The evidence shows that unequal access to alternative data can increase information asymmetry between sophisticated investors and individual investors without necessarily enhancing price discovery.*"

"main street" investor to learn from informed traders.[7] The SEC needs to consider how we can level the playing field for all investors and eliminate any "barriers to entry" that can result in an unfair advantage that prevents the average investor from benefiting from the same information and financial wherewithal to which high net worth investors have access.

Role in Performing Due Diligence

WhaleWisdom receives numerous requests daily for a particular company's latest 13F filing as investors use Form 13F holdings reports to ensure that a company fits within its risk appetite. Checking Form 13F ownership data is now a standard part of due diligence right alongside other traditional fundamental research. When researching a security, one of the first tools investors use is 13F disclosure data to see who else owns the stock and who has been selling. Investors can assess liquidity, "over crowdedness," and risk using Form 13F data.

Disclosure also serves another important purpose - to encourage managers to run their fund well by shining light on their investment holdings and by giving investors the information they need to make informed decisions about the fund.[8] Disclosure also can assist in keeping a manager from drifting away from the fund's stated investment objective and prevent a manager from taking on more risk than investors were willing to take on. Reducing the number of filers under the proposal will drastically reduce the usefulness and quality of this data and, as discussed above, there is no reasonable alternative source for this information.

C. The Proposal Can Reduce Investor Confidence in the Integrity of the U.S. Markets

When Congress enacted Section 13(f), Congress noted that "[w]ith the dissemination of data about institutional managers, an institutional disclosure program should stimulate a higher degree of confidence among all investors in the integrity of our securities markets."[9] WhaleWisdom believes that 13F filings add transparency to the market which helps give investors confidence to invest in our markets. Removing 90 percent of all Form 13F filers from public view will, on the other hand, give the perception that U.S. market disclosure is inadequate.

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[7] A study by Morningstar found that "Far from creating a level playing field, where more readily available information simply leads to greater market efficiency, the impact of the information revolution is the opposite: it is creating hard-to access "realms" for long-term alpha generation for those players with the scale and resources to take advantage of it." https://www.morningstar.co.uk/uk/news/165439/is-big-data-the-key-to-bigger-investment-returns.aspx

[8] *See* "Does Portfolio Disclosure Make Money Smarter?." Kang, Sinclair, Xeno, November 20, 2019 (http://www.apjfs.org/resource/global/cafm/2019-7-1.pdf) which found that disclosure of hedge fund portfolio holdings through Form 13F filings helped investors make better decisions when evaluating fund managers: "*Our results provide evidence that investors make smarter allocation decisions to funds that publicly disclose their holdings . . . investors are better able to choose the good funds, and avoid the bad funds . . . If regulation can help these institutional investors choose better hedge fund managers, then this is potentially a large gain to the wealth portfolio of a wide cross-section of society."*

[9] Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 85 (1975).

Similarly, transparency can be an effective tool in ensuring market integrity and combating bad behavior. We believe that Form 13F filings can act as a valuable deterrent to such behavior and robust and accurate Form 13F disclosure can alert regulators and investors to any unlawful behavior.

By increasing the threshold for filings to $3.5 billion, all but the approximately 550 largest investment managers would be able to accumulate significant stakes in public companies without a public reporting obligation. As such, many of the most prolific investors whose trading activities have significant impacts on individual public companies as well as the market as a whole would be free from quarterly disclosure obligations. The only remaining entities still consistently reporting on Form 13F would predominantly be large index funds and other passive investors not ordinarily involved in price discovery. As a result, investors would be left with an incomplete view of the asset management market by implementation of the proposal.

III. Concerns Regarding Accuracy and Overstatement of Costs of the Proposal

The Release discusses a number of costs - both direct and indirect – to filers of Form 13F. While we are not in a position to opine on the economic analysis performed by the Commission, we are concerned, as with other commenters, regarding the Commission's assessment of the cost savings associated with the proposal. We particularly share SEC Commissioner Lee's concern that "the approach to revising the burden estimate for Form 13F relies on assumptions that vastly overstate the complexity and resulting burden of the reporting requirement."[10] As a consolidator of Form 13F information, we have seen that changes in technology have given managers the ability to file Form 13F reports much easier and with significantly less advance preparation time, thereby reducing the direct costs involved with filings. Clients have told WhaleWisdom that the cost estimates in the proposal are simply not accurate.

The proposal also describes indirect costs associated with Form 13F, including the use of Form 13F data by market participants to engage in front running or copycatting of the investment portfolios of smaller managers, which the Commission states may increase the costs of investing for smaller managers and hinder their investment performance, with potential effects on their portfolios' owners.[11]

WhaleWisdom believes that evidence that front running or copycatting due to Form 13F filings actually damages the owners of a portfolio or a portfolio manager's return is inconclusive at best. Some managers will naturally want to protect their proprietary trading strategies and will argue that Form 13F filings reveal their secrets. We would argue that the built-in limitations of Form 13F filings prevents this, or at the very least reduces this significantly. A manager's portfolio can contain a large number of positions that would not be disclosed on Form 13F, such as short positions, bonds, and foreign holdings. Also, because Form 13F is reported at the company level and not the fund level, this further obfuscates any proprietary trading strategies. Finally, the built-in delay in

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[10] SEC Commissioner Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting*, July 10, 2020.

[11] In addition, the proposal discusses (a) the costs to smaller managers of requesting confidential treatment of Form 13F information and (b) costs to the Commission associated with staff time and resources spent addressing smaller managers' inquiries and requests for assistance regarding compliance with Form 13F reporting obligations.

Form 13F filings prevents investors from knowing exactly when a manager trades into or out of a position. Market participants therefore cannot simply replicate a particular manager's portfolio. It is important to remember that a manager can always submit an application for confidential treatment as long as they are able to demonstrate to the Commission that disclosure of securities positions would in fact reveal the manager's investment strategy.[12]

IV. Alternative to Proposed Reporting Threshold Adjustment

WhaleWisdom does not support any change to the Form 13F reporting threshold for the reasons discussed above. However, we recognize the length of time since the reporting threshold has been updated. With that said, if the Commission determines that it is necessary to increase the reporting threshold, WhaleWisdom believes an examination of an increase of a small amount that would still allow for the Commission to capture the holdings of influential managers while easing any perceived burden on smaller investment managers should be the most that the Commission should consider. We recognize that there have been a number of such proposals made by other commenters, such as raising the threshold based on one of the two potential consumer price inflation calculations. Before any such potential increase is adopted, we still recommend that the Commission better illustrate the burdens and costs on smaller managers claimed in the proposal.

We also believe that an idea worth examining would be to provide an exclusion to certain types of smaller managers in order to retain the transparency of information of influential managers that would help contribute to an overall better understanding of the U.S. securities market while still addressing the concerns illustrated by the Commission.

V. Elimination of Omission Threshold

The proposal would eliminate the omission threshold that currently permits managers to exclude from Form 13F certain small positions.[13] WhaleWisdom supports the elimination of the omission threshold. We believe this information will add to the transparency around a manager's holdings and, in turn, to the benefits brought to the markets as discussed above. We also do not believe that the incremental increase in cost, for either large or small managers, is significant to prevent including securities holdings information below the omission threshold on Form 13F.[14]

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[12] Similarly, while we are not in a position to opine on the legalities of Commission authority to pursue the changes in the proposal, significantly the raising of the reporting threshold, we are concerned about the uncertainty raised by other commenters regarding the Commission's authority to pursue the proposed changes. As SEC Commissioner Lee stated, the enabling statute, at Section 13(f)(1), provides no support for increasing the reporting threshold. We are concerned if the Commission would be overstepping its bounds, whether its explicit authority or its exemptive authority, to increase the reporting threshold.

[13] Form 13F allows, but does not require, a manager to omit holdings of fewer than 10,000 shares (or less than $200,000 principal amount of convertible debt securities) and less than $200,000 aggregate fair market value.

[14] As the Release notes, if a larger manager were to determine that disclosure of a small holding may negatively affect its competitive position, we believe that a larger manager would be able to seek appropriate protection without undue burden by filing a Form 13F CTR.

VI. Other Proposed Amendments

The proposal would make other amendments to, most significantly, require filers to provide additional identifying information and require managers to report certain numerical identifiers to enhance the usability of the information provided on Form 13F.

Additional Identifying Information

The proposed amendments would require each Form 13F filer to provide their CRD number and SEC filing number, if any, on Form 13F. WhaleWisdom supports the proposal. We believe that this information would allow the Commission and other consumers of Form 13F data to identify a Form 13F filer's other regulatory filings and the interrelationships between managers who share investment discretion over 13(f) securities more easily. We also believe that disclosing this information would not be unduly burdensome for 13F filers.

We also support permitting managers to provide, in lieu of a CUSIP number, other identifiers such as a Financial Instrument Global Identifier (FIGI) for each security. WhaleWisdom believes there is a clear need for a unique identifier for every security other than ticker and name, which can have many variations. We would recommend allowing only one security identifier and using a free identifier such as LEI, which is already used in N-PORT filings, or open FIGI.

Other Technical Amendments

WhaleWisdom also supports requiring filers to round all dollar values listed on Form 13F to the nearest dollar and remove the requirement to omit "000." We believe there is no need to round and the rounding requirement has caused inconsistencies in filings and that many filers already round to the nearest dollar.

The Commission also requests comment on whether there are any other amendments that should be made to streamline Form 13F or simplify its instructions. Filers often report the wrong type of amended filing and will report "new holdings" when the filing should be a complete restatement and vice versa, and some amended filings are a "partial" restatement of holdings. We therefore recommend only allowing a complete restatement of holdings when amending to reduce confusion.

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WhaleWisdom offers its assistance to the Commission as it examines the proposal. If you have any questions on our comment letter, please feel free to contact me at daniel@whalewisdom.com.

Sincerely,

Daniel Collins

Daniel Collins
Founder and President

cc: The Honorable Jay Clayton, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Dalia Blass, Director, Division of Investment Management