September 29, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
By Email: (rule-comments@sec.gov)

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

Dear Ms. Countryman:

CFA Institute[1] appreciates the opportunity to respond to the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") on its rule proposal, Reporting Threshold for Institutional Investment Managers (the "Proposal").[2] CFA Institute speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and on issues of fairness, transparency, and accountability of global financial markets.

Executive Summary

Considerations of market transparency and integrity lead us to oppose the Proposal. The Proposal would raise the 13(f) filing threshold by a factor of 35 times, from $100 million in assets under management to $3.5 billion. Nearly 90 percent of current filers, comprising more than 4,500 institutional investment managers with $2.322 trillion in reported assets, would no longer be subject to the 13(f) filing requirement.[3] The resulting loss of holdings information would harm market participants such as, among others, investors, issuers, researchers, and the affected institutional investment managers themselves.

We consider the proposed 35-fold increase in the reporting threshold to be excessive and, moreover, inconsistent with the Commission's recent decision against adjusting the financial

[1] CFA Institute is a global, not-for-profit professional association of nearly 171,400 investment analysts, advisers, portfolio managers, and other investment professionals in 165 countries, of whom more than 164,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 154 member societies in 77 countries and territories.

[2] Sec. and Exch. Comm'n, *File No. S7-08-20, Reporting Threshold for Institutional Investment Managers* (July 10, 2020), *available at* https://www.sec.gov/rules/proposed/2020/34-89290.pdf [hereinafter Reporting Threshold Release].

[3] Based on numbers in "Table 1: Form 13F Reporting Threshold Changes," Reporting Threshold Release at 16-17.

thresholds in the accredited investor definition. We believe it is the accredited investor definition, rather than the 13(f) reporting requirement, that needs updated thresholds.[4]

The Commission argues the higher proposed threshold would purport with the purpose of the Act, which it suggests is to focus exclusively on large institutional investment managers. According to this argument, the growth of securities markets has rendered the original (and current) reporting threshold of $100 million irrelevant to the Act's focus on large investment managers.

In our view, the enabling statute, in section 13(f)(1), only gives the Commission authority to lower the threshold, not to raise it. Therefore, the Proposal conflicts to with the legislative history and Congressional intent.

We also believe the Proposal would run counter to other statutory objectives, such as the needs to build investor confidence, enable issuers to identify their beneficial owners, afford an understanding of the effect of institutional investor activities on individual securities, and serv as a single centralized repository of certain holdings data. And finally, we believe the economic analysis falls short in establishing a baseline of current practices and assessing the costs and benefits of the proposed rulemaking in a thorough and impartial manner.[5]

Discussion of the Proposal

How Investors and Others Use and Benefit from 13(f) Disclosures

The elimination of 13(f) data on the scale proposed in this rulemaking would have a harmful effect on securities markets and their participants, including, among others, investors, issuers, and institutional investment managers themselves.

The significant number of letters from investors who use and value the 13(f) disclosures that would be lost under this Proposal should alert the Commission to the disclosures' value to market participants. It also provides strong evidence that the proposed reduction in disclosures would undermine investor confidence, thus undermining one of the statutory objectives of the 13(f) framework.

The comment file also makes clear that market participants benefit from 13(f) disclosures in a variety of ways. Investors use the filings for due diligence on smaller investment managers. The loss of the holdings data, therefore, would impede such due diligence and potentially reduce demand for smaller investment managers, the group of investment managers the Proposal is intending to benefit.

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[4] *See* James C. Allen, CFA Institute Comment Letter on Amending the "Accredited Investor" Definition (May 4, 2020), at https://www.sec.gov/comments/s7-25-19/s72519-7159328-216511.pdf.

[5] SEC, *Current Guidance on Economic Analysis in SEC Rulemakings*, Memorandum (March 6, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf [hereinafter Current Guidance].

Investors also use the data to detect fraud;[6] and to analyze hedge funds' crowded trades[7] and assess levels of their crowding risk;[8] and to aid in price discovery.[9] Consequently, the loss of these disclosures would likely have a significant and negative effect on investors as well as on market risks and efficiency.

Securities issuers use 13(f) data to identify beneficial owners, particularly for smaller issuers that lack the resources to engage a proxy solicitor to understand their shareholder bases.[10] It is, in fact, the smaller institutional investors that are more likely to hold securities of small-cap companies.[11] Therefore, eliminating their 13(f) holding filing would likely harm small-cap issuers, in particular, and ultimately impede issuer outreach and issuer-shareholder dialogue, good-governance practices the Commission has specifically encouraged.[12]

The Proposal suggests that the relevant data from smaller institutional investors is unneeded because of their limited ability to affect securities markets.[13] While that may be true for the largest of large cap stocks, investment managers with AUM between $100 million and $3.5 billion do have significant potential to move the prices of small or mid-cap securities which, as noted above, they tend to hold more frequently than large managers. What matters is not the total assets managed by a manager, but the volume of buy or sell transaction(s) the firm generates in comparison with a security's trading depth and liquidity. This is a particularly relevant consideration because, again, these smaller managers are more likely to hold the stocks of

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[6] See Doron Cohen, Hedge Fund Due Diligence, comment letter on File No. S7-08-20, (July 14, 2020), at https://www.sec.gov/comments/s7-08-20/s70820-7415172-219344.htm.

[7] Joanna Ossinger, Bloomberg, "Goldman Warns SEC Proposal Could Shroud Hedge-Fund Crowding," (July 20, 2020), available at https://www.bloomberg.com/news/articles/2020-07-20/goldman-warns-sec-proposal-could-shroud-hedge-fund-crowding (last checked Sept. 20, 2020).

[8] Joanna Ossinger, Bloomberg, "Goldman Warns SEC Proposal Could Shroud Hedge-Fund Crowding," (July 20, 2020), available at https://www.bloomberg.com/news/articles/2020-07-20/goldman-warns-sec-proposal-could-shroud-hedge-fund-crowding (last checked Sept. 20, 2020).

[9] Joanna Ossinger, Bloomberg, "Goldman Warns SEC Proposal Could Shroud Hedge-Fund Crowding," (July 20, 2020), available at https://www.bloomberg.com/news/articles/2020-07-20/goldman-warns-sec-proposal-could-shroud-hedge-fund-crowding (last checked Sept. 20, 2020).

[10] *See*, *e.g.*, National Investor Relations Institute, The Case for 13F Reform (Sept. 25, 2019), available at https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI-Case-for-13F-Reform-2019-final.pdf (observing, "The lack of ownership transparency is of particular concern to smaller issuers that cannot afford to pay for stock surveillance firms that analyze trading patterns and try to determine which investors are buying or selling shares.")

[11] Proposal at 23, citing Blume and Keim as "providing evidence that portfolios of smaller institutional investors are weighted more heavily towards smaller stocks…").

[12] Chair Mary Jo White, Remarks at the 10th Annual Transatlantic Corporate Governance Dialogue, (Dec. 3, 2013), available at https://www.sec.gov/news/speech/2013-spch110313mjw, (saying, "Engagement with shareholders should mean more than just mailing out the annual proxy statement and conducting the annual meeting. It should mean proactive outreach, and clear, direct, and honest communications about how and why decisions are being made.").

[13] Proposal at 25-26, (saying "We believe that it is necessary to continue to provide regulators and the public information regarding the equities holdings of larger managers that have the potential to significantly affect the securities markets. The need for public disclosure of holdings of smaller managers is less compelling…[T]he dollar value of the aggregate holdings of the smaller managers that would no longer be required to file reports on Form 13F under the proposal represent a small percentage of 13(f) securities overall.")

smaller companies.[14] The 13(f) disclosures, therefore, provide valuable information that would be lost under this Proposal.

Academic researchers, too, use the 13(f) data to discern and analyze a variety of investing trends, including, for example, track the rise of passive and index investing. Academic research plays an essential part in creating an informed marketplace, informed investors, and informed regulators.[15]

Finally, attorneys use these filings in private securities class action matters, including determining lower-bound estimates of damages. Such private actions have important and positive spill-over benefits for enforcement, as the Proposal describes.[16]

The Proposal suggests users might be able to find similar data from alternative disclosure sources. The alternatives cannot, however, replace the 13(f) framework, which serves as a central repository of holdings data.[17]

Increase in the Reporting Threshold

The proposed 35-fold increase in the reporting threshold, together with the elimination of information about89.2 percent of current filers, goes well beyond the rate of inflation, which would result in an increase of four or five times (to $400 million or $500 million).[18] Rather, the Commission chooses to base the change in threshold on the growth in the markets and entities it regulates.[19] While we would not expect the Commission to suggest limiting its regulatory activities to only the largest regulated entities, this Proposal proposes something analogous: namely, to drastically reduce the number of investment managers subject to the disclosure rule because of the growth of capital markets.

It is in the contrast of the Commission's approach to addressing changes over time in these thresholds with the approach applied in the accredited investor definition where the disparities are most glaring. In the newly adopted amendments to the accredited investor definition, for instance,, the Commission rejected adjustments to its wealth and income thresholds to address nearly four decades of inflation where an effective threshold is needed to ensure retail accredited investors have the financial ability, investing understanding, and access to advisory support to

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[14] Proposal at 23, citing Blume and Keim as "providing evidence that portfolios of smaller institutional investors are weighted more heavily towards smaller stocks…").

[15] The Commission's guidance on economic analysis states, "In addition to the direct benefits and costs, the economic analysis should address significant ancillary economic consequences." If the impact on academic research is considered to be an ancillary economic consequence, it would still be significant and should be analyzed alongside the impact on direct market participants. Current Guidance at 10.

[16] The Proposal states, "Commission staff has noted that 'meritorious private actions have long been recognized as an important supplement to civil and criminal law-enforcement actions.'" Proposal at 22, footnote 51.

[17] We discuss this in more detail on page 8.

[18] According to the Proposal, using the Consumer Price Index (CPI) or Personal Consumption Expenditures Price Index ("PCE") would result in a reporting threshold of $500 million and $400 million, respectively. Proposal at 20.

[19] See, e.g., SEC, Fiscal Year 2021 Congressional Budget Justification at 30, at https://www.sec.gov/files/secfy21congbudgjust.pdf, (saying, "Most importantly, the size of the SEC-regulated community continues to grow in volume and complexity, and significantly exceeds existing resource levels.")

invest in illiquid, opaque, and higher risks of fraud of private markets. These are palpable risks that can be financially devastating to such investors.

No comparable risks or regulatory burdens confront institutional investment managers subject to this disclosure. According to the Proposal, investment firms would enjoy direct savings of only $15,000 to $30,000 per filer per year (assuming, as valid, proposed compliance estimates that are in question.)

It is inconsistent that the Commission would reject the opportunity to adjust the accredited investor wealth thresholds for inflation and then propose a 35x increase for the 13(f) reporting threshold.

Should the Commission decide to proceed with this Proposal, we recommend 2010 as the base year for growth, rather than 1975. Though Congress first adopted 13(f) legislation in 1975, it chose to retain that same threshold when it amended that very sentence in the Dodd-Frank Act, which became law on July 21, 2010.[20] Since then, the S&P 500 has increased by a factor of 3.3 times. Therefore, a proportional change in the 13(f) reporting threshold would increase it to $330 million, not $35 billion.

Finally, we hope the proposed 35-fold increase will not drive a process that results in a less extreme but still unwarranted increase.[21]

Assumptions of the Proposal

The Proposal is based on an argument that the purpose of the Act was to provide information about large institutional investment managers that have the power to affect the markets. Thus, by removing filing obligations for nearly 90 percent of current filers, the Proposal "is designed to reflect proportionally the same market value of U.S. equities that $100 million represented in 1975."[22] In this view, the information to be eliminated is unneeded, because the universe of those smaller institutional investors and their holdings were not originally intended to be captured by the statute.[23]

We find this argument inappropriate and extraneous. The only language relevant to the Commission's interpretation, application, and enforcement of this mandate is in the statute, which requires 13(f) reports from institutional investment managers with AUM "of at least $100,000,000 or such lesser

[20] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, SEC. 13A. Reporting and Recordkeeping for Certain Security-Based Swaps (amending Section 13(f)(1) of the Securities Exchange Act of 1934).

[21] An analogous process played out with the Proxy Advisory rulemaking, with the Commission first proposing but eventually removing a requiring for two sets of issuer reviews before a proxy advisory firm could send its report to its clients. If the final rule can be perceived as a compromise, it is one proceeding from an egregious starting position. The final rule will still result in an unacceptable interference in the independence of proxy advisory firms.

[22] Proposal at 12.

[23] See also Proposal at 21 ("The legislative history indicates that the reporting threshold of section 13(f) was designed to focus on larger managers…We believe that section 13(f) was intended to provide transparency into a certain segment of the securities markets—the equity holdings by larger institutional investment managers.").

amount (but in no case less than $10,000,000) as the Commission, by rule, may determine, shall file reports…"[24]

The proposal to raise the threshold above $100 million, therefore, conflicts with the explicit language of the statute itself. Moreover, Congress recently, by default, reaffirmed this intention in the 2010 amendment that left the $100 million threshold intact.[25]

Even if the Commission were to show that its authority derived from another section of the statute, it would face the additional hurdle of showing that an increased threshold somehow better reflected Congressional intention when the Act expressly included in 13(f)(1) the limiting phrase, "or such lower amount."

The Proposal also cites a report of the SEC Inspector General ("IG Report") that recommended the Commission "determine whether an increase in the threshold amount should be pursued."[26] The IG Report clearly implied the need for the Commission to seek legislative authority before it could raise the threshold above $100 million. Specifically, Recommendation 10 states that various Divisions and Offices within the Commission, including those of the General Counsel and the Chairman's Office, "should determine whether legislative changes to Section 13(f) of the Securities Exchange Act of 1934 should be sought**,** specifically with respect to…[a number of measures, including] increasing the Section 13(f) reporting threshold."[27]

Finally, it cites section 13(f)(3) as giving the Commission authority to exempt any manager or class of managers from the reporting requirements of section 13(f). Application of the phrase, "any class of managers," to exempt nearly 90% of firms currently reporting under the rule is not just questionable as to its suitability but also whether it defeats the explicit instruction of 13(f)(1). It is also unclear whether such an interpretation could withstand court challenge, but also raises the question of whether such a use of finite and limited Commission funding is best used for this purpose.

Thus, the context shows that Congressional focus on the largest institutional investment managers was qualified with respect to timing ("limited initially") and start-up efficiencies ("rapid implementation while minimizing costs and burdens"). The same qualifications do not necessarily hold upon full implementation of the regulation. On the contrary, the statute held

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[24] Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)).

[25] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, SEC. 13A. Reporting and Recordkeeping for Certain Security-Based Swaps.

[26] Office of the Inspector General, Review of the SEC's 13(f) Reporting Requirements (Sept. 27, 2010), available at https://www.sec.gov/about/offices/oig/reports/audits/2010/480.pdf ("OIG Report"), at 27. Notably, two SEC Divisions (those of Investment Management and of Risk, Strategy, and Financial Innovation) concurred with the recommendation, and no office disagreed with it. Release at 27 and 37-44. The then-Office of the Chairman commented on other recommendations in the IG Report, but was silent on this one.

[27] Office of the Inspector General, Review of the SEC's 13(f) Reporting Requirements (Sept. 27, 2010), available at https://www.sec.gov/about/offices/oig/reports/audits/2010/480.pdf ("OIG Report"), at 27. Notably, two SEC Divisions (those of Investment Management and of Risk, Strategy, and Financial Innovation) concurred with the recommendation, and no office disagreed with it. Release at 27 and 37-44. The then-Office of the Chairman commented on other recommendations in the IG Report, but was silent on this one.

forth the possibility that the Commission might determine to expand the regulation to cover investment managers that fell under the initial $100 million threshold.

The proposed increase in the filing threshold also would run counter to several other objectives of the Act. These include the following objectives, all noted above: to increase investor confidence;[28] to gain an understanding of the impact of institutional investment activities on individual securities;[29] to help issuers identify beneficial owners; and to serve as a central repository of the reported holdings data.

The Proposal suggests that alternative sources of holdings data "may provide overlapping or similar data to that included on Form 13F."[30] Specifically, it names two such sources: mutual fund holding data filed on Form N-PORT, and a future consolidated audit trail (CAT) of trading activity in National Market System securities.[31] In addition, one might also consider Schedule 13d or 13g data as potential alternatives.

Reliance on such alternatives, however, would defeat a central purpose of the 13(f) framework: namely "to achieve uniform, centralized reporting" of the holdings data.[32] Instead, the Proposal would resurrect for most firms the very dispersion problem that the 13(f) legislation was designed to solve. Moreover, the two specifically named alternative sources would fail to replace the proposed loss of current 13(f) disclosures. Form N-PORT contains holdings data filed by registered investment companies, a category that comprises a subset of the universe of institutional investment managers that file 13(f) holdings data. And not only is the CAT not yet in existence, its future development is far from certain. And even if the CAT becomes a reality, its transactions data would not be publicly disclosed and therefore could not serve as an alternative source for the public.

Nor would the data in Schedules 13D or 13G serve to meet investors' needs, given that they are limited to of investors who have acquired more than 5 percent of a company's equity securities. These disclosures would fail to capture any holdings under the 5 percent ownership threshold, regardless of the size of the investment manager.

For these reasons, we disagree with the principal contention in the Release that the proposal would return the universe of 13(f) filers and filings to a more faithful representation of the original statutory intent.

[28] See Senate Report, at 82 (saying, "Thus, with the dissemination of data about institutional investment managers, an institutional disclosure program should stimulate a higher degree of confidence among all investors in the integrity of our securities markets."

[29] Proposal at 23, (citing Blume and Keim as "providing evidence that portfolios of smaller institutional investors are weighted more heavily towards smaller stocks.").

[30] Proposal at 24.

[31] Proposal at 24-25.

[32] 15 U.S. Code § 78m.

Concerns with the Economic Analysis

The Economic Analysis contained in this Proposal does not adhere to the Commission's own standards, as articulated in its own guidance on the topic. The Proposal falls short in establishing a baseline of current practices and impartially assessing the costs and benefits of the proposed rulemaking. [33]

We note that the Proposal contains no separate section for the Economic Analysis, but instead offers comments scattered throughout the text.[34] A separate section focused on the Economic Analysis would make clear its level of rigor, depth and soundness.[35] Likewise, the Economic Analysis should clearly label the analysis of the baseline. While the Proposal includes components of a baseline, the word itself never appears in the Proposal.

The Baseline

The Economic Analysis establishes a baseline against which to measure the likely economic consequences of the proposed regulation. The baseline is "the best assessment of how the world would look in the absence of the proposed action."[36] It should describe not only the investment managers that file 13(f) disclosures, but also who uses the data, how they use it, and what benefits they derive from it.[37] The descriptions should be quantified to the extent possible.

In its request for public comments, the Proposal asks the right questions about who uses the data and what the benefits of those uses are for investors and the market.[38] The Proposal answers these questions with minimal detail. It simply says:

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[33] SEC, *Current Guidance on Economic Analysis in SEC Rulemakings*, Memo (March 6, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf (identifying the elements as follows: "(1) a statement of the need for the proposed action; (2) the definition of a baseline against which to measure the likely economic consequences of the proposed regulation; (3) the identification of alternative regulatory approaches; and (4) an evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis.").

[34] The Proposal devotes a separate section to the proposed Paperwork Reduction Act (PRA) Analysis, and the economic analysis leans heavily on the PRA estimate. A PRA estimate, however, has more limited purposes than the economic analysis and cannot serve as a substitute for it. See RSFI and OGC, Memorandum: Current Guidance on Economic Analysis in SEC Rulemakings, (March 6, 2012), at 11, available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf (stating, "With most rules, the cost estimate that results from multiplying PRA burden-hours by hourly wage rates is not substitutable for the broader analysis of a rule's likely economic consequences contained in the Proposal's economic analysis.")

[35] While not necessary in all rulemaking releases, a dedicated section for the economic analysis would be especially helpful here, because of its deficiencies. See Current Guidance at 15.

[36] Current Guidance at 6.

[37] Current Guidance at 7 ("Defining the baseline typically involves identifying and describing the market(s) and participants affected by the proposed rule. Most SEC rules affect one or more markets directly but it may also be appropriate to consider additional markets or participants that may be indirectly affected by the proposed rule.").

[38] See, e.g., Question 11 at 28 ("Who uses Form 13F data? Are these uses beneficial to investors, market integrity, or capital formation? Why or why not? How will these users of the data be affected if the reporting threshold is increased and fewer filers report?") and Question 9 at 27 ("What, if any, are the benefits to investors and markets for the markets to have access to Form 13F data from smaller managers?"). Proposal at 27 and 28.

> [T]he pool of users of the data has expanded to include academics, market researchers, the media, attorneys pursuing securities class action matters, and market participants (including institutional investors themselves) who use the data to enhance their ability to compete. The data can also 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. Commission staff also uses Form 13F information for a variety of purposes…[39]

This does not go beyond that brief description and explain how users actually use the data and what benefits they derive from it.

Assessing Costs of the Proposed Regulation

The Economic Analysis also should include a thorough and impartial analysis of the potential costs and benefits of eliminating the 13(f) filing requirement for affected investment managers.[40]

In an earlier section, we identified a variety of users of 13(f) disclosures, the benefits they derive from those disclosures, and the harms that the loss of that data would entail.[41] The economic analysis should assess with particularity how the proposed loss of data would affect each of these users and the market as a whole. Instead, the Economic Analysis offers little beyond a generalized assessment of these costs of the Proposal. For instance, the Proposal offers the following remark: "Whether any of these Form 13F data users find the data from smaller managers to be valuable would depend on their particular use of this data."

In addition, the Proposal asserts without evidence, "We believe that the investing public specifically would be less concerned about the availability of portfolio holdings of these smaller managers because the activities of these smaller managers are not likely to cause market effects of the type contemplated by section 13(f)."[42] As noted above, however, investment managers with assets between $100 million and $3.5 billion can have on material impact on the price of small or mid-cap securities.

Whereas the Proposal bases its estimate of the benefits the higher threshold (in the form of compliance cost savings) on unspecified "outreach" to the affected asset managers, there is no comparable mention of any outreach to investors or other users to determine the potential costs of the 13(f) disclosures. Such outreach could bolster understanding of the costs to eliminate 13(f) filing requirements for affected filers. And judging from the comment file, users and other market participants are not shy in expressing their views on this question.

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[39] Proposal at 22.

[40] Current Guidance at 4 (stating, "[A]n evaluation of the benefits and costs—both quantitative and qualitative—of the proposed action and the main alternatives identified by the analysis."); and at 14 (Noting that the evaluation should "[f]rame costs and benefits neutrally and consistently.").

[41] These include instilling investor confidence, gaining an understanding of the market impact of investment managers' trading, and providing a range of other investor benefits. Issuers rely on the holdings information to identify their beneficial owners. In addition, the data is used in academic research and in private securities litigation, which in turn benefits civil and criminal law-enforcement actions. See supra discussion at 2-4.

[42] Proposal at 24.

Assessing Potential Benefits of the Proposal

Congress set the $100 million threshold in 1975, and effectively reaffirmed it in 2010. In intervening decades, the advent of the IT revolution has brought advances in accounting and reporting software solutions to reduce processing and production costs. The Proposal tentatively acknowledges this, saying, "We believe that some of the direct compliance costs associated with preparing filings on Form 13F have decreased since 1975, principally due to lower-cost information processing systems." It then downplays the significance of these lower costs by stating, "[I]n connection with staff outreach to advisers to smaller fund complexes, these advisers stated that reporting on Form 13F involves significant compliance burdens."

These findings run counter to what we heard from CFA Charterholders who work in investment management firms and are familiar with 13(f) reporting. For example, the president of one investment management firm told us most firms with assets under management of more than $100 million have portfolio accounting software programs that easily create reports. It is then a simple step to upload the reports to the SEC website for filing purposes.

Not without controversy,[43] the Proposal estimates total direct compliance costs at $113.6 million, or four times larger than the estimated $31.2 million that the Commission accepted just two years ago.[44] The new estimate would translate into a direct compliance cost savings of $15,000 to $30,000 annually for each affected investment manager ($4,100 to $8,200 under the previously estimated rate) that would no longer have to file Forms 13F.[45] Commissioner Lee offers an alternative estimate, based on the previous cost estimate, of $4,000 to 5,000 per affected manager.[46]

The Proposal asserts it "would provide meaningful regulatory relief for smaller managers" without estimating cost savings in a quantitative context. The economic analysis should compare its estimated cost savings of $15,000 to $30,000 per manager to their other financial metrics, such as their average total compliance costs, average net income, average revenue, or average assets under management.[47] At maximum – for a manager with $100 million of reported assets and an annual compliance cost of $30,000 – the total cost savings would amount to 3 basis points (or 0.03 percent) of reported assets.[48] The average percentage for the entire pool of affected managers would be far less, given that their assets would range from $100 million to $3.5 billion and the cost savings could be lower than $30,000.

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[43] See, e.g., Commissioner Allison Herren Lee, Statement on the Proposal to Substantially Reduce 13F Reporting, (July 10, 2020), at https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10.

[44] The increase is driven, not by higher filing costs over the past two years, but instead by a proposed change in calculating those costs. Proposal at 41-45. The Proposal bases the proposed change on staff analysis and unspecified "outreach to managers." Proposal at 18.

[45] Proposal at 18.

[46] Commissioner Allison Herren Lee, Statement on the Proposal to Substantially Reduce 13F Reporting, (July 10, 2020), at https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10.

[47] If the Commission lacks all the data to make these calculations, it should make reasonable assumptions to fill in any gaps. Failing that, it should explain why it cannot make such calculations.

[48] This assumes that that $30,000 represents the *incremental* savings. The savings would be less if the manager had to devote some of the same resources to fulfill other accounting, reporting, or investment needs.

In our view, the estimated benefits would be far outweighed by the harm to transparency, market integrity, and investor needs.

The Proposal also identifies two potential sources of indirect compliance costs: the possibility of front-running or copycatting based on 13(f) disclosures. To conduct such analyses, however, the economic analysis must first provide evidence that the disclosures lead to these practices, and second, demonstrate that such practices cause harm to the affected filers. It couches these possibilities in tentative terms:

> Consequently, Form 13F data of smaller managers may be more likely to be used by other market participants to engage in behavior that is damaging to the manager and the beneficial owners of the managed portfolio, such as front running (which primarily harms the beneficial owners) or copycatting (which potentially harms the portfolio manager)…[14]

Moreover, the current framework permits a 45-day filing deferral to avoid these misadventures. They also may avoid these problems by requesting confidential treatment to protect their trades and trading strategies. The Proposal implies that the affected filers are more likely to request confidential treatment, noting that 75% of all Form 13F CTRs filed come from the targeted group of managers who account for 9.2% of total market AUM.[49] A more relevant comparison, in our view, comes from comparing the frequency of confidentiality requests from the affected group against their prevalence in the total population of filers (89.2%).[50] It is therefore reasonable to conclude that affected filers have less need for such confidentiality requests and are less likely to suffer harm from their 13(f) disclosures.

The Proposal asserts, "The academic literature provides partial evidence about the harm caused by the actions of third parties that is applicable in the context of the proposed amendments."[51] However, the most relevant study, the Christofferson Paper, finds that 13(f) filers strategically delay disclosures out of concern of front-running, not copycatting.[52] The study does not whether the delays succeed in protecting filers from front-running but does observe that investment institutions would benefit from copycatting if they intended to sell their recently purchased shares into a rising market.[53]

The same paper finds that small funds are less likely than larger funds to delay their disclosures, suggesting they see little need to protect themselves from front-running or copycatting. By

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[49] Proposal at 14.

[50] Smaller managers also may have limited resources with which to file Form 13F CTRs to protect their competitive positions.

[51] Proposal at 19.

[52] See e.g., Susan E.K. Christoffersen, Erfan Danesh, and David Musto, *Why Do Institutions Delay Their Shareholdings? Evidence from Form 13F*, (Working Paper, June 11, 2018) (hereinafter"Chistoffersen et al"), available at https://www.bwl.unimannheim.de/media/Lehrstuehle/bwl/Area_Finance/Finance_Area_Seminar/HWS2018/Christoffersen_Paper.pdf (stating, "We look at 14 years of 13F filings to gauge the role of these three motives in the decision to delay disclosure, and the results indicate that front-running and voting, but not copycatting, motivate delays.").

[53] Chistoffersen et al at 21

extension, the same evidence casts doubt on the need for regulatory relief to protect these investment managers from such practices.

The Proposal cites only one study whose findings suggest harm from 13(f) disclosures, and those to a distinct and limited group of hedge funds. This study found the investment performance of these hedge funds declined after they began to file 13(f) disclosures.[54] The affected hedge funds were characterized by an assortment of idiosyncratic features, including portfolios with more illiquid stock holdings, lower turnover rates, greater portfolio concentration, less conventional trading strategies, etc.[55] Thus, even accepting that the 13(f) disclosures actually caused (and were not merely correlated with) declining investment performance, the question remains as to whether the experiences of this unique group of hedge funds should be projected onto a larger pool of 13(f) filers and the extent, if at all, to base policymaking on those findings.

Conclusion

We do not support the Proposal's recommendation to increase the reporting thresholds for Form 13F to $3.5 billion from the current $100 million. We believe such a change would undermine market transparency that many investors, issuers, academics, and others have come to expect from these reports. We also contend that the purported cost savings to issuers are minimal in comparison with the costs to investors in lost information, and to the markets in terms of reduced trust, that are likely to come from the Proposals provisions.

Should you have any question about our positions, please do not hesitate to contact Stephen Deane, CFA, at stephen.deane@cfainstitute.org or James C. Allen, CFA, at james.allen@cfainstitute.org or 434.227.1338.

Sincerely,

/s/ James C. Allen

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[54] Shi, Zhen, *The Impact of Portfolio Disclosure on Hedge Fund Performance*, (2017), Journal of Financial Economics, Vol. 126. Cited in the Proposal at 20.
[55] As cited in ethe Proposal, footnote 49, at 20.