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8/3/2020

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

RE: Proposal to Raise 13F Filing Threshold, File No. S7-08-20

Dear Ms. Countryman,

We're offering comments **opposing** the proposed plan by the Commission's division of Investment Management to raise the asset-threshold to $3.5 billion and exempt over 4,500 current reporting firms, over 89% of total current filers.

ModernIR is the leader in quantitative equity-market analytics for US-listed companies, serving trillions of dollars of total market-capitalization as the investor-relations profession's market-structure experts. We have a well-informed perspective on US equity capital markets. Our written testimony on recommended improvements to capital-formation for issuers was entered into the permanent Congressional record at a June 2017 session of the House Financial Services Committee.

I was first struck, reading the proposal, that there is no proffered justification save a reduction in work for the SEC, which is not a purpose supported by the Securities Act ("the Act"), and a minor diminution in administrative costs for funds the amount of which is immaterial for registered advisors of all sizes, which is likewise not a purpose supported by the Act.

The Act is meant to foster free and fair markets for all constituents. The Commission outlined 34 questions for commenters. Not one pertains to issuers. The Act specifically prohibits discriminating against issuers, by name.

Moving to core substance, there are four failures in this proposal, which might be mitigated through concessions or revisions. I'll address each:

1. The Commission's misconstruction of the purpose for the 13(f) Amendments.
2. The subjectivity of revisions focused only on the financial threshold.

3. Transparency for issuers.
4. Transparency for retail investors.

The proposal contends that the "Legislative history indicates that the reporting threshold of section 13(f) was designed so that reporting would cover a large proportion of managed assets, while minimizing the number of reporting persons."

It's a subjective statement. I suspect the SEC is trying to argue that because most investors were individuals at the time, and big asset managers were few in number, that the legislative aim was to cover the few rather than the many.

In fact, the legislative history is clear: The Securities Act and the Exchange Act, taken together, were intended to protect investors and to outlaw fraud. The results of the study Congress commissioned from the SEC and which the SEC cites concluded: **"The past and likely future growth of institutional investors in the equity markets, makes the collection of timely information about institutional holdings and activity in securities essential for an agency responsible for the administration of the federal securities laws . . .The importance of a regularized, uniform, and comprehensive scheme of institutional reporting cannot be minimized in light of the demonstrated growth of institutional investment and its impact on the structure of the securities markets, corporate issuers and individual investors."**[i]

The words that stand out to me are "comprehensive" and "timely," along with that last sentence highlighting how the expected growth of institutional investment would impact market structure, corporate issuers and individual investors.

And I think we can agree, backing up, that comprehensive means "as complete as possible." If the SEC exempts 4,500 investors from disclosures, it's not a comprehensive standard, even if the remaining 550 investors required to file disclosures hold 90% of assets.

Which brings us to Point #2:

The Subjectivity of Revisions Focused Only on the Financial Threshold. The Commission claims in its proposal that (bolded emphasis ours) *"Section 13(f) of the Exchange Act gives the Commission broad rulemaking authority to determine the **size** of the institutions required to file reports, the **format** and **frequency** of the reporting requirements, and the information to be disclosed in each report."*[ii]

So, why did the Commission choose only the size of the institutions required to file and the format (XML), while omitting any consideration of updated frequency (or disclosed information, for that matter, such as short-selling positions mandated by Dodd-Frank legislation[iii])? After all, in 1975 when Congress passed the the 13(f) amendments, the timely filing mechanism was the US mail. And the standard was four times per year.

Now in the equity markets, the standard means of communication is instant messaging. Online retail brokerage firm Robinhood with 13 million users posts the number of accounts holding stocks by ticker via a real-time, free, public API.

Should a retail broker-dealer be more transparent than hedge funds? It's a matter for debate and lawsuits. But the point is, the way we gather and disseminate information has changed dramatically since 1975, and the SEC's proposal here is dead silent on frequency though the Commission claims oversight of timing.

If the SEC wants to change financial thresholds, it should also change timeframes, and arguably, methods of dissemination, and content too, to reflect the way markets work and information flows now. The issuer community led by NIRI, the investor relations professional association (on whose board I currently sit), has been trying for decades altogether in one way or another to speed up reporting timeframes. In 2011, my firm led an effort, the Issuer Data Initiative[iv], to move reporting to monthly, and to include both long and short holdings.

The 2010 Dodd-Frank bill passed by Congress includes a proviso directing the Commission to study and implement some form of short-reporting. There are legislative efforts underway to shorten timeframes for the related 13D and 13G forms for large holdings. On all these, there has been no regulatory action. Why omit timeframes now?

Transparency for Issuers. In February 2015, I wrote an editorial for Traders Magazine[v] referencing a speech by then-SEC chair Mary Jo White, in which she said, paraphrasing, that we must evaluate all (regulatory) issues through the prism of the best interest of investors and the facilitation of capital formation for public companies. The secondary markets exist for investors and public companies, and their interests must be paramount.

Perhaps Chair Clayton feels differently about the capital markets, but I doubt it. So, while this proposal narrowly fragments investors into camps – Filers and Non-Filers – it does not serve their uniform interests and it prejudices both the tens of millions of retail investors and the thousands of US-listed issuers relying on 13Fs for vital information on who owns what.

The Commission's responsibility is to provide a level playing field for all, without jeopardizing any constituency's interests. Sure, it's a tough job balancing competing aims. Exchanges must do it, serving customers with sometimes opposing objectives (the Exchange Act bars them from discriminating against any constituency, and Reg NMS's Access Rule requires fairness for all[vi]). Public companies must do it, serving an array of self-interested stakeholders besides shareholders.

And yet somehow, it works.

By our estimates, public companies spend roughly $5 billion per year on legislatively enforced and SEC-mandated disclosures for investors. Ironically, most assets are now managed by behemoth firms following models that largely disregard issuer disclosures. This, by the way, is the group you capture with your new thresholds – the ones whose behavior is disconnected from the messages and disclosures companies expend vast resources supporting.

It's probable that a disproportionate share of the nine percent of assets and 4,500 firms exempted under this proposal are "Active" stock-picking investors, the ones public companies most need to understand and track. These are the ones to which my profession, investor relations, seeks to communicate differentiating messages about story, management, strategy, financials. Set this new threshold, and you deprive public companies of capacity to tie outreach to investor-response, and you obviate the feedback mechanism for those billions of dollars spent on investor-disclosures.

To put a fine point on it, at leviathans Blackrock, Vanguard, State Street and Fidelity, the preponderance of assets are now passive. And remember, Exchange Traded Funds, investment phenomenon of the modern era, are created and redeemed off-market in large blocks between sponsors and Authorized Participants, transactions measuring in the trillions of dollars per year, which are not counted as fund-turnover or portfolio-changes.

Remove transparency into ownership and investor-targeting, and there's yet another reason for companies to choose private equity for growth over public markets. And without public companies, there is no market.

Last, we come to:

Transparency for Retail Investors. Protecting Main Street investors is a critical Commission responsibility under The Securities Act. The scores of millions making their own buying and selling choices deserve the best information available to support prudent decision-making. Many rely on seeing what the professional investor buys or sells. They learn by observing. Eliminating thousands of investors from this educational bastion because some of them don't want to be observed is an unnecessary and inexcusable introduction of risk into retail investment.

Now, having presented what we think is strong rebuttal to the proposal, we can always compromise and find a way that works for everyone. To that end, we offer these thoughts.

Points for Compromise

If the Commission is dead set on changing thresholds – half the questions posed in the proposal relate to what should shape the correct threshold – then negotiate with issuers and accommodate their legitimate right to fair and equal treatment and transparency.

1. *Make the filings monthly and long and short, since timely information is an objective of the legislation and a responsibility under the purview of the SEC.* There's no logical basis for lifting the threshold to modernize the filings without modernizing timeframes too.

2. *Predicate the threshold not on the stock market's appreciation but on inflation-adjusted assets.* The US dollar is worth about 20% of what it was in 1975 when Congress added the 13(f) amendments. So set the threshold at $500 million.

3. *Adopt the Australian standard*[vii]*: Give public companies authority to request from any investor regulated by the Act a timely and confidential disclosure of all economic interest the investor holds in the issuer's shares.* This standard preserves confidentiality for investors

while permitting public companies to know their holders, a baseline expectation for any public company.

In sum, it would do grave disservice to US capital markets and its vital issuer and retail-investor constituents if the SEC were to take a long step backward in transparency. Nobody wins here but a handful of secretive hedge funds. That's not a level playing field, nor a free and fair market.

But we can compromise and achieve meaningful and substantive improvements to disclosure standards. And from that standpoint, we appreciate that the Commission has created an opportunity to improve the 13F standard in ways that matter to everyone.

Yours Sincerely,

Tim Quast
President and founder

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[i] Daniel Etlinger, Pepperdine Univ Journal of Business, Entrepreneurship & Law, https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1023&context=jbel
[ii] Page 7, SEC Proposal: https://www.sec.gov/rules/proposed/2020/34-89290.pdf
[iii] Dodd Frank and the Consumer Protection Act both direct a study of short-reporting, even in realtime: https://www.sec.gov/files/short-sale-position-and-transaction-reporting%2C0.pdf
[iv] Lou Cordone, Tim Quast, Reuters Insider Hot Topics: Issuer Data Initiative: https://insider.thomsonreuters.com/link?entryId=1_t5nico3h&shareToken=MTA3NjAzNTo0MWI3YTg4ZS02NGZhLTRhZjUtYmYxYi1mZTFjMDNhMjVjNmQ%3D&cn=uid349594&cid=212907&start=0&end=230
[v] https://www.tradersmagazine.com/departments/brokerage/the-age-of-intermediation-or-no-room-at-the-regulators-table/
[vi] Regulation National Market System, Final Rule. https://www.sec.gov/rules/final/34-51808.pdf
[vii] Australian laws and regulations governing tracing of beneficial share-ownership are rigorous and specific. See Section 6.2: https://www.bakermckenzie.com/-/media/files/people/lustig-richard/australia_publiclistedcompaniesguide.pdf?la=en