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August 10, 2020

Email: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

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

Dear Ms. Countryman:

I am writing on behalf of Old National Bancorp, a financial services company headquartered in Evansville, Indiana. We are concerned with the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

The SEC's proposal will allow 89 percent of current 13F filers to go dark, which will result in a significant loss of market transparency to our company as well as other publicly traded companies in the United States. As written, the proposed rule will impair engagement with shareholders, impede our ability to attract new long-term investors, and deprive us of timely information about activist hedge funds.

The 13F filings are the only accurate source of ownership information available to our company. As you are aware, 13F data is the only data that shows which "street name" investors are buying or selling our shares each quarter. The information disclosed by 13F filings cannot be easily duplicated as stock surveillance rely on quarterly 13F filings for critical data.

The potential impact of this 13F proposal to our company and our obligation to regularly confer with our investors throughout the year are particularly concerning because the reduction of 13F transparency will impair our ability to identify and engage with our most active shareholders. We

estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow 151 of our 371 current 13F filers to evade disclosure. While some of our largest investors would continue to disclose shares held, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our company and many others, it is the 13F data from the active investment managers and hedge funds under the proposed \$3.5 billion threshold that is more valuable.<sup>1</sup>

### **Reduced Engagement Due to Lack of Transparency**

Our company uses 13F data to allocate the limited time of our senior executives among the many requests that we receive from investors for one-on-one calls or meetings. We give priority to not only our largest investors and fund managers but also those shareholders with smaller positions who are interested in increasing their holdings in our company. With this proposed increase in the 13F threshold, we would not have visibility into this important group.

### **Negative Impact on Capital Formation**

The loss of 13F data will also impede our company's ability to attract new long-term institutional investors. Like many other issuers, we use 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of our outreach efforts to prospective investors. Both of these practices are essential for our company to effectively access the capital markets and to grow our business. Under the proposed threshold, the loss of transparency will hinder our ability to raise growth capital. In keeping with the SEC's mission, we ask the Commission to consider the impact on capital formation before proceeding with this rulemaking.

### **Increased Risk of Activism**

The Commission's proposal is seemingly at odds with recent requests by the SEC that we and other public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global COVID-19 pandemic.<sup>2</sup> Just as there is a need for greater transparency on our part to our investors, our need for ownership data is even greater during these uncertain times, when market volatility is high and many activist investors have taken advantage

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<sup>1</sup> According to Edelman's financial communications practice group, 60 percent of activist asset managers would fall under the \$3.5 billion threshold. See Jeremy Cohen and Jeff Zilka, Edelman, "SEC Proposed Rule Change Is A Step Backwards for Shareholder Democracy," July 29, 2020, available at: <https://finance.yahoo.com/news/sec-proposed-rule-change-step-193708183.html>.

<sup>2</sup> 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.

of share price declines to amass larger stakes in potential target companies. Under the proposed \$3.5 billion threshold, we would be unable to monitor those activist investors who would be exempt from reporting their positions, thus “gaming the system” and using the increased lack of transparency for their benefit and not that of our company’s long-term shareholders.

The loss of 13F data may expose our company to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that we eliminate jobs, increase share buybacks, or take other measures that may not be part of our long-term strategy or the investment strategy of our 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>3</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>4</sup>

While we agree with modernization of the ownership disclosure rules, we believe that the negative impacts of the current 13F proposal will reduce our company’s ability to engage effectively with our 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>5</sup> the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,<sup>6</sup> and the proposed updates to SEC’s rules on shareholder resolutions.<sup>7</sup>

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<sup>3</sup> 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>.

<sup>4</sup> 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>.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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 \$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.)

We request that the Commission withdraw its proposed 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by National Investor Relations Institute, the NYSE Group, and the Society for Corporate Governance, and Nasdaq.<sup>8</sup> Rather than reduce 13F transparency, we urge the SEC to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and cutting the 45-day reporting period.

Sincerely,



Jeffrey L. Knight  
Chief Legal Counsel, EVP

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<sup>8</sup> See NYSE Group, NIRI, and Society for Corporate Governance, Request for Rulemaking Concerning Amendment of Beneficial Ownership Reporting Rules Under Section 13(f) of the Securities Exchange Act of 1934 in Order to Shorten the Reporting Deadline under Paragraph (a)(1) of Rule 13f-1, Petition No. 4-659, February 4, 2013, available at: <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>; NYSE Group and NIRI, Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934, Petition No. 4-689, October 7, 2015, available at: <https://www.sec.gov/rules/petitions/2015/petn4-689.pdf>; and Nasdaq, Petition for Rulemaking to Require Disclosure of Short Positions in Parity with Required Disclosure of Long Positions, Petition No. 4-691, December 7, 2015, available at <https://www.sec.gov/rules/petitions/2015/petn4-691.pdf>.