



August 14, 2020

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,

On behalf of Hannon Armstrong (NYSE: HASI), a leading investor in climate change solutions headquartered in Annapolis, Maryland, we are writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

We believe that the SEC's proposal, which would allow 89% of current 13F filers to avoid disclosure, would result in a significant loss of market transparency to our company and other publicly traded companies in the United States. The proposed rule, if enacted, would impair engagement with shareholders, impede our ability to attract new investors, unnecessarily weaken capital formation and prudent corporate governance, and deprive us of timely information about activist hedge funds.

The 13F filings are the only accurate source of ownership information available to public companies. Monitoring the investor base is a fundamental and critical activity of a public company, and the inability to identify investors would have negative consequences. We estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow 36 percent of our current top 25 investors to evade disclosure.

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 cannot possibly say yes to every investor request to speak with our senior management, so we try to 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.

We do not believe that the Commission has adequately considered the potential impact of this 13F proposal on public companies and their obligation to regularly confer with investors throughout the year. Like many other small and medium sized companies, we at Hannon Armstrong (with ~\$2.5 billion market cap) are particularly concerned about how the reduction of 13F transparency would impair our ability to identify our most active shareholders, engage effectively with them, and measure the effectiveness of our shareholder



outreach. These practices are essential for smaller companies like ours to effectively access the capital markets and grow their businesses.

The loss of 13F data also would 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 around who is holding as well as buying our shares each quarter would hinder the ability of our company to continue 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.

Many companies actively reach out to shareholders to ensure their concerns are being addressed. This active outreach, which is often referenced in the proxy, is intended to improve corporate governance and align management with shareholders. Without the 13F filings, corporations, especially smaller companies, would not have the ability to identify and engage many of their top 100 shareholders on these critical topics.

Increased Risk of Activism

The loss of 13F data under the proposed rule potentially exposes our company to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that we eliminate jobs, reduce funding of critical long-term initiatives, 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.¹ 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.²

Without the 13F data we receive now, our company will not know 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. In fact, a few years ago, our

¹ 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>.

² 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>.



company was targeted by a hedge fund activist using “short and distort” tactics, which negatively impacted our share price and ability to raise capital for a period of time.

While we agree that SEC should modernize its ownership disclosure rules, we believe that the negative impacts of this 13F proposal on 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,³ the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,⁴ and the proposed updates to SEC’s rules on shareholder resolutions.⁵

For the foregoing reasons, 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, the Society for Corporate Governance, and Nasdaq.⁶ 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.

³ 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).

⁴ 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).

⁵ 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.)

⁶ 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>.



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