



National Investor Relations Institute

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August 28, 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:

We, the undersigned 237 publicly traded companies, 26 investor relations counseling firms, and five industry associations, join with the National Investor Relations Institute (NIRI) in opposing the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

While we welcome the Commission's interest in modernizing 13F reporting, we believe that the proposed amendments would reduce transparency around hedge fund activism, significantly undermine issuer-investor engagement, and deprive retail investors of information they use to make investment decisions. We urge the Commission to withdraw this proposal and instead consider the common-sense reforms that were detailed in rulemaking petitions submitted by NIRI, the NYSE Group, the Society for Corporate Governance, and Nasdaq.¹ Rather than allow 89 percent of current 13F filers to go dark, we urge the Commission to reduce the archaic 45-day reporting period, require 13F filers to disclose short positions, and support legislation to provide for monthly disclosure.²

¹ See NYSE Group, NIRI, and the 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>.

² Congress has expressed a clear intent for 13F filers to provide more disclosure. Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 called for monthly disclosure of short positions, while

Since the Commission's Form 13F rules were adopted more than 40 years ago, there has been a dramatic increase in engagement between institutional investors and the public companies with whom they invest. Investors have become more active in engaging with issuers on many important matters, including capital allocation decisions, long-term strategy, M&A, and ESG risks and opportunities. In response, companies have hired and/or engaged investor relations professionals to ensure that the concerns of investors are heard and conveyed to senior executives and directors.

One of the most important duties of these IR professionals is to respond promptly to requests from investors for calls or meetings with C-suite executives or directors. At most companies, the volume of requests far exceeds the scarce executive (or director) time available for such engagement, so IR professionals have to help decide which investors should have priority. To make these determinations, most U.S. issuers rely heavily on the quarterly ownership information in 13F filings, the only accurate source available.³

The Commission's proposed amendments would seriously jeopardize the robust engagement by U.S. companies by excluding more than 4,500 investment managers from disclosure. These managers include a number of well-known hedge fund executives and billionaire investors who fall under the proposed \$3.5 billion threshold because they do not hold a significant volume of 13(f) securities on a long-term basis.⁴ While companies would continue to receive information from the largest investors, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For many companies, it is the 13F data from the more active investment managers under the \$3.5 billion threshold that is more valuable.⁵ Small and mid-cap issuers, which typically have a greater percentage of these investors, would be especially hard hit by this loss of transparency. Without that 13F data, issuers may not realize

Section 951 mandated annual disclosure of proxy votes on executive compensation.

³ Unfortunately, companies cannot simply accept investors' representations at face value. In a 2016 survey of NIRI members, 45 percent said they definitely had experiences with investors who misrepresented their positions to obtain meetings with C-suite executives, while another 31 percent said they suspected that had happened.

⁴ See, e.g., Bloomberg News (Quint), "Tepper, Einhorn, Soros Stock Holdings Would Go Dark in SEC Plan," July 15, 2020, available at <https://www.bloombergquint.com/markets/tepper-einhorn-soros-stock-holdings-would-go-dark-in-sec-plan>.

⁵ According to an IHS Markit analysis of the Russell 3000, an average company would lose visibility into 55 percent of its current 13F filers and 69 percent of the hedge funds on its 13F list. IHS Markit, "SEC's 13F Proposal – Issuer and Investor Analysis," August 7, 2020, available at: <https://ipreo.com/blog/secs-13f-proposal-issuer-and-investor-analysis/>.

that activist funds are plotting a proxy contest until one of those funds triggers the 13D disclosure threshold and surfaces with a 5 percent (or more) position.⁶

The Commission also has not fully considered the negative impact of raising the 13F threshold on retail investors and small asset managers, many of whom use 13F data when making investment decisions.⁷

For the foregoing reasons, we urge the Commission not to adopt a 35-times increase in the 13F threshold and instead implement the reforms proposed by NIRI and other organizations to improve market transparency and foster more effective issuer-investor engagement.

Sincerely,

National Investor Relations Institute
Abercrombie & Fitch Co.
ABM Industries, Inc.
ACCO Brands Corporation
Acme United Corporation
Advanced Drainage Systems, Inc.
Advanced Energy Industries, Inc.
Aflac Incorporated
Agius Pharmaceuticals Inc.
Air Lease Corporation
Albany International Corp.
Albemarle Corporation
Albertsons Companies, Inc.
Allied Motion Technologies, Inc.
Allison Transmission Holdings, Inc.
Alnylam Pharmaceuticals, Inc.
Ambac Financial Group, Inc.

⁶ The potential reduction in 13F transparency is especially concerning as market observers expect a post-pandemic surge in hedge fund activism, similar to what happened after the financial crisis of 2008-09. *See Barron's*, "Hostile Bidders Are Ready to Pounce on Struggling Companies. They're Waiting—for Now," March 27, 2020, available at: <https://www.barrons.com/articles/hostile-bidders-are-ready-to-pounce-on-struggling-companies-theyre-waiting-for-now-51585326808>.

⁷ Retail shareholders have submitted hundreds of comments that oppose the SEC's 13F proposal. Many investors review 13F data before making trading decisions, just as they monitor Form 4 data on stock trades by corporate insiders. When the Commission reduced the Form 4 reporting period to two business days in 2002, the SEC touted the benefits of greater ownership transparency: "Making this information available to all investors on a more timely basis should increase market transparency, which will likely enhance market efficiency and liquidity." Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release Nos. 34-46421; 35-27563; File No. S7-31-02, August 29, 2002.

AMETEK, Inc.
AptarGroup, Inc.
ARCA biopharma, Inc.
Archer Daniels Midland Company
Arcutis Biotherapeutics Inc.
Astronics Corporation
Athersys Inc.
Atlantic Union Bankshares Corporation
Atlantica Sustainable Infrastructure PLC
Atlassian Corporation Plc
Automatic Data Processing, Inc.
Axalta Coating Systems Ltd.
Bandwidth Inc.
Barnes Group Inc.
Bausch Health Companies, Inc.
BG Staffing, Inc.
Boston Scientific Corporation
Box, Inc.
BP Midstream Partners, LP
BP plc.
CACI International Inc.
Calithera Biosciences, Inc.
Cambium Networks Corporation
Campbell Soup Company
Celanese Corporation
Central European Media Enterprises Ltd.
Cerence, Inc.
Charles & Colvard, Ltd.
Cheniere Energy, Inc.
Chevron Corporation
Chipotle Mexican Grill, Inc.
Clarivate Plc
Clearside Biomedical Inc.
Coca-Cola European Partners PLC
Coeur Mining, Inc.
Cognizant Technology Solutions Corporation
Columbus McKinnon Corporation
Compass Minerals International, Inc.
Compugen Ltd.
Constellation Brands, Inc.
Contura Energy, Inc.

Coty, Inc.
Crown Crafts, Inc.
CSI Compressco LP
Curtiss-Wright Corporation
CytomX Therapeutics Inc.
DCP Midstream, LP
D.R. Horton, Inc.
Delta Air Lines, Inc.
DICK'S Sporting Goods, Inc.
Digimarc Corp.
Digital Realty Trust, Inc.
Dine Brands Global, Inc.
DIRTT Environmental Solutions Ltd.
Dominion Energy, Inc.
Donaldson Company, Inc.
Dycom Industries, Inc.
Enable Midstream Partners, LP
ENANTA Pharmaceuticals, Inc.
Endo International PLC
Equitable Holdings, Inc.
ESH Hospitality, Inc.
Essential Utilities Inc.
Etsy, Inc.
Evans Bancorp Inc.
EVO Payments, Inc.
Exelon Corporation
Extended Stay America, Inc.
FactSet Research Systems Inc.
Federal Agricultural Mortgage Corporation (Farmer Mac)
FedEx Corporation
Fifth Third Bancorp
First Horizon National Corporation
First Pacific Company Limited
Five Below, Inc.
Flexsteel Industries, Inc.
Flowserve Corporation
Fluidigm Corporation
Fortinet Inc.
Foundation Building Materials, Inc.
Frontdoor, Inc.

Gannett Co., Inc.
GMS Inc.
Graham Corporation
Hallador Energy
Hamilton Beach Brands Holding Company
Hannon Armstrong Sustainable Infrastructure Capital, Inc.
Harmony Biosciences, LLC
Hasbro, Inc.
HD Supply Holdings, Inc.
Helios Technologies, Inc.
Helmerich & Payne, Inc.
Herc Holdings Inc.
Hilton Grand Vacations Inc.
Hologic, Inc.
Horizon Therapeutics plc
Huntington Bancshares Incorporated
Hyster-Yale Materials Handling, Inc.
Ichor Holdings, Ltd.
IDACORP, Inc.
InterDigital Inc.
Intevac, Inc.
Iridium Communications Inc.
iRobot Corporation
KNOT Offshore Partners LP
Knowles Corporation
Kulicke & Soffa Industries, Inc.
Lear Corporation
Leidos Holdings, Inc.
Lennar Corporation
Liberty Global plc
Lightbridge Corporation
Lincoln National Corporation
Lindsay Corporation
LivePerson, Inc.
Lydall, Inc.
Lyft, Inc.
LyondellBasell Industries N.V.
Macy's, Inc.
Magellan Midstream Partners, L.P.
Marriott International, Inc.
Marriott Vacations Worldwide Corp.

Martin Midstream Partners L.P.
Masonite International Corporation
Mastercard Incorporated
Materion Corporation
McCormick & Company, Inc.
MEI Pharma Inc.
Meridian Bioscience, Inc.
Meritage Homes Corporation
Meta Financial Group Inc.
Microchip Technology Inc.
Mirati Therapeutics, Inc.
Mondelez International, Inc.
Moog Inc.
Morningstar, Inc.
Murphy USA, Inc.
Mylan N.V.
NACCO Industries, Inc.
Navistar International Corporation
Neenah, Inc.
NetApp Inc.
NetScout Systems, Inc.
NovaGold Resources Inc.
Okta, Inc.
Omnicell, Inc.
Oshkosh Corporation
Otter Tail Corp.
Overstock.com, Inc.
P.H. Glatfelter Company
PagerDuty, Inc.
Palo Alto Networks Inc.
PBF Energy Inc.
PBF Logistics LP
Perrigo Company PLC
Photronics, Inc.
Pitney Bowes Inc.
PPL Corporation
Principal Financial Group, Inc.
ProAssurance Corporation
PROS Holdings, Inc.
PVH Corp.

Quanta Services, Inc.
R1 RCM Inc.
Rand Capital Corporation
Rayonier Inc.
Regions Financial Corporation
ResMed, Inc.
Revance Therapeutics Inc.
RigNet, Inc.
Rogers Corporation
Royal Gold Inc.
RPM International Inc.
Rubius Therapeutics, Inc.
Sempra Energy
ServiceSource, Inc.
Slack Technologies, Inc.
SM Energy Company
Splunk Inc.
Sprouts Farmers Market, Inc.
SPX Corporation
Steelcase Inc.
Superior Drilling Products, Inc.
Superior Group of Companies, Inc.
SVMK Inc.
Tanger Factory Outlet Centers, Inc.
Tejon Ranch Co.
TETRA Technologies, Inc.
The Cheesecake Factory Incorporated
The Mosaic Company
The Procter & Gamble Company
The Sherwin-Williams Company
The Shyft Group
The Southern Company
Thermon Group Holdings, Inc.
Titan International, Inc.
Toll Brothers, Inc.
Trane Technologies plc
Transcat, Inc.
TRI Pointe Group, Inc.
Trinity Industries, Inc.
Tutor Perini Corporation

Twilio Inc.
Tyler Technologies, Inc.
Tyme Technologies, Inc.
UFP Technologies, Inc.
United Therapeutics Corporation
Univar Solutions Inc.
Veeva Systems Inc.
Veracyte, Inc.
Vir Biotechnology, Inc.
Vista Outdoor Inc.
Western Alliance Bancorporation
WillScot Mobile Mini Holdings Corp.
Workday, Inc.
Wyndham Destinations, Inc.
Xcel Energy, Inc.
Yext, Inc.
Zebra Technologies Corporation
Zendesk, Inc.
Zynerba Pharmaceuticals Inc.

Counselors/Consultants

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Lincoln Churchill Advisors
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Sharon Merrill Associates
Strategic Investor Relations LLC
The IGB Group
The Plunkett Group
Three Part Advisors, LLC

Industry Associations

CEO Investor Forum at Chief Executives for Corporate Purpose (CECP)
Federation of American Hospitals
Insured Retirement Institute (IRI)
Nareit
The Independent Petroleum Association of America