31 August 2020

SECURITIES AND EXCHANGE COMMISSION

PROPOSED RULE: REPORTING THRESHOLD FOR INSTITUTIONAL INVESTMENT MANAGERS

17 CFR PARTS 240 AND 249 [RELEASE NO. 34-89290; FILE NO. S7-08-20] RIN 3235-AM65

Dear Ms. Countryman,

I hope you are well in these unprecedented times.

We have been following closely the public discussion around the proposed reporting threshold change to 13F filings, which appears to consist primarily of commentary denouncing the changes in terms of a potential negative impact on transparency.

In our view, the SEC's proposed change to the reporting threshold for 13F filings need not have the negative impact on transparency that critics of the proposal are claiming. The commentary is failing to paint a true picture of market impact. In fact, they appear instead to promote opinions that focus primarily on the impact to their business models.

It is our opinion that the 13F filing mechanism itself is the real issue and that such commentary fails to address two fundamental deficiencies in the 13F.

1. 13F filings fail to provide issuers with any real transparency into their shareholders
2. 13F filings fail to protect investors' intellectual property and investment strategies

The 13F mechanism of disclosure fails on other counts as well.

1. Filings at best represent only c50% of investment vehicles – they rarely include Pension Funds, Hedge Funds, Activist Funds, Sovereign Wealth Funds, Wealth Managers, etc.
2. Filings are not representative of funds' true positions as they are susceptible to "Window Dressing" and "Portfolio Washing"
3. Filings' timeliness validity is questionable as they are delayed to the last possible time allowable

Therefore the SEC's proposed change is actually not the threat to transparency that it is perceived to be, and rather, the attention should be on whether the 13F method of disclosure is actually fit for purpose in the first place.

There are far better mechanisms than the 13F to achieve the two objectives above - and they have been present in capital markets worldwide for over 30 years, but not the US. In fact, the US has become an "outlier" in terms of market transparency. Not only has the reliance on 13F ensured issuers have no real transparency into their shareholders, and that investors' investment strategies are not protected, it has also put the US in a weaker position to protect its issuers against the threat of foreign control.

As such, regulatory regimes worldwide have instead provided issuers with a far more effective solution – a Disclosure Law giving the issuer a **legal right** to know who has a beneficial interest in their stock.

Disclosure Laws are either introduced into a country's Companies Act, or an individual issuer's By-Laws. These laws are rooted in an issuer's ability to impose "disenfranchisement penalties" (typically a withdrawal of Voting Rights and Dividend Allocation) on institutional investors that fail to disclose their positions within 3 "working days". These disclosures are not made public, to protect the investor.

Examples of Countries with Disclosure Laws in their Companies Act

The United Kingdom
Ireland
Singapore
France
Norway
Australia
South Africa
Finland

Companies with A Disclosure Law

Randgold Resources – (South Africa)
P&O
Bank of Ireland
Vimpelcom – (Dutch/Russian)
Electric Geodesics (US)
Phrophotonix (US)
Verseon (US)
Halo Source (US)

With such laws present, issuers can identify in-excess of 90% of their shareholders, without exposing any investor's investment strategy. That is currently impossible for US issuers. As such, the ideal solution for the SEC to achieve its objectives of shareholder transparency for issuers and IP protection for investors, is to supplement the 13F with a US Disclosure Law. The filing threshold is almost immaterial.

CMi2i has written a paper that sheds more light on this issue and the solution, which can be found attached and here: Seeing More Clearly – Changes to 13F Filing Requirements. We hope you find it useful.

Yours sincerely,

Mark Simms
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