

SEEING MORE CLEARLY

CHANGES TO 13F FILING REQUIREMENTS

HOW THE PROBLEM CAN BE SOLVED



INTRODUCTION

The SEC has recently proposed a significant change to the threshold requiring investors to submit 13F filings. Under the proposal, the minimum reporting threshold of \$100 million in US equities under management would change to \$3.5 billion.

Through this change, the SEC is aiming to update reporting standards so that they apply to the same proportion of the market as they did when the regulation was first written in 1975. At that time, the \$100 million threshold accounted for 75% of the dollar value of all institutional equity security holdings. The SEC estimates that the \$3.5 billion threshold would mean the rule is applied to the same share of the market.

But the SEC's proposal also means that 89% of the investment managers currently required to file 13Fs would be exempt. That accounts for 4,500 investment managers, overseeing \$2.3 trillion in assets.

The SEC says the proposed rule will help smaller asset managers in a number of ways, including reducing compliance costs, reducing the regulatory burden and reducing the risk of copycat investing.

The response from investors, businesses and capital markets' related associations has been one of overwhelming concern – many asserting the lack of transparency will be devastating for investors and issuers alike.

CMi2i would like explain in the following pages, that while the proposed change would indeed have a dramatic effect on the percentage of shareholders visible publicly, **there is a way to give issuers transparency of share ownership without having to make fund holdings public** – thereby solving the problem the SEC is attempting to address, without negatively impacting issuers' ability to engage with shareholders.

WHY IT IS IMPORTANT FOR AN ISSUER TO KNOW THEIR SHAREHOLDERS

As many of the open letters to the SEC have pointed out, an issuer's ability to identify their shareholders plays a crucial role in a wide range of activities that are critical to business health.

When a company knows who current and potential equity / debt holders are, it is better placed to assess how its capital needs are being met.

For a company to ensure its valuation is accurate, it needs to communicate effectively with its investors and make sure they are fully cognisant of the company's equity story.

And the ever-increasing obligations of global stewardship codes mean that asset managers need to better protect their investors' interests by making sure their investee companies are properly conducting themselves. For this to be achieved, there must be increased engagement between issuers and their investors. This becomes increasingly difficult if the issuer cannot identify who those investors are.

Additionally, issuers need to know who maintains the voting mandate in their stock to ensure that all investors are given the ability to participate in General Meetings. This is critical when issuers need to mobilise stockholders to reach the quorums required to pass resolutions, defend themselves against hostile M&A situations, or counter activist/short attacks.

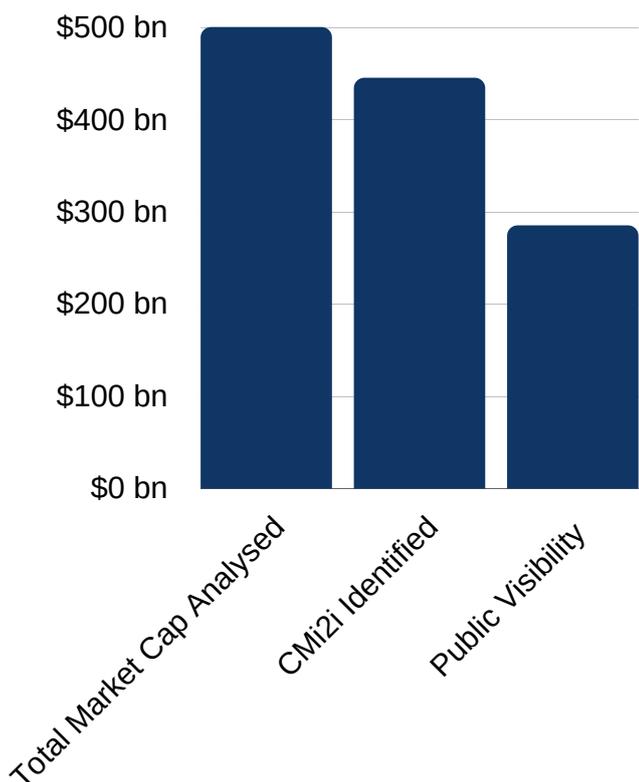


WHAT ISSUERS CAN CURRENTLY SEE THROUGH PUBLIC DATA & WHAT THEY WILL SEE IF THE 13F FILING THRESHOLDS ARE CHANGED

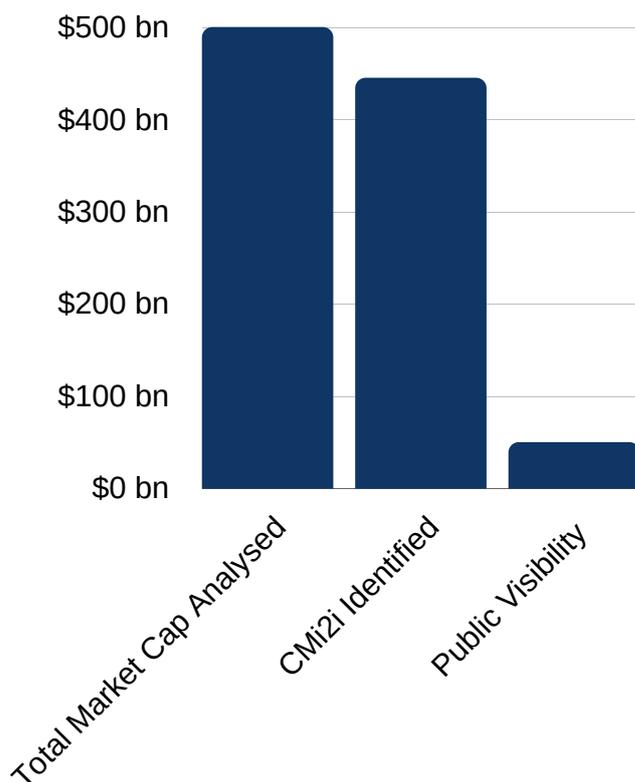
Public data provides a limited view of share ownership, no matter what the filing threshold. Issuers only have a partial view of share ownership if they are relying on public filings. In fact, according to CMi2i’s recent research, a company will only be able to see just over 50% (on average) of investors holding their stock if they rely on public filings and declarable stakes alone.

Changing the threshold isn’t going to take us from perfect clarity to total darkness as some market commentators have insinuated. This is because the view is already significantly cloudy. The problem that so many issuers and organisations are concerned about is one that already exists: 13Fs and their global equivalents have never provided issuers with a clear picture of their share ownership.

PERCENTAGE OF SHAREHOLDERS VISIBLE CURRENTLY USING 13F



PERCENTAGE OF SHAREHOLDERS VISIBLE AFTER 13F CHANGES



GLOBAL FILING OBLIGATIONS - AN IMPERFECT MECHANISM

13F Filing Deficiencies

- 4 snapshots per year – filings do not show intra-quarter positions
- 45 days in which to file – portfolios constantly change
- Prone to “Window dressing” & “Portfolio Washing”
- Filings do not apply to all types of Investment Vehicles
- Mutual Funds only represent (approx) 30% of investments

Other investment vehicles might not have the same filing obligations – so do not appear in the public domain or on any data platforms unless passing through declarable stake thresholds. These include:

- Sovereign Wealth Funds
- Active and Activist Funds
- Insurance Funds and
- Pension Funds
- Hedge Funds
- Prime Brokerage and Proprietary Desk positions
- Wealth Management
- Stock Lending

SOLUTION

One of the primary objections to filing obligations from the investment community – whatever the threshold – is that it serves to provide their competitors with insight into their investment decisions and strategies.

When the UK regulators considered introducing a 13F equivalent in the 1980s, they agreed that the public filing obligation could damage investors' intellectual property and compromise their competitive advantage. Their solution was to introduce a disclosure mechanism that provided issuers with transparency into their stockholders, whilst also protecting investors from the negative impacts of publicly stating their equity investments.

This mechanism came in the form of a Disclosure Law within the UK Companies Act, which gave issuers the legal right to identify who held a beneficial interest in their shares. The law (Section 793 of the Companies Act) enables a UK issuer to approach any investor – anywhere in the world and at any time – and force them to declare their position within 3 working days or become liable for disenfranchisement as a shareholder. The disenfranchisement includes withdrawal of the Shareholders Dividend Allocation and withdrawal of their Voting Rights.

As such, since 1986, a UK issuer can theoretically identify 100% of their shareholders.

These laws have since been replicated all over the world. Below are examples of countries that have introduced disclosure requirements into their Companies Acts to obtain full shareholder transparency for Issuers. Additionally, from September 3rd 2020, the European Union is introducing a Pan European Disclosure Law into the Shareholder Rights Directive II that provides all 26,000 European issuers with the rights stated above, but with the additional sanction that investors can be liable for significant financial penalties (up to €1,000,000) for failure to disclose.

United Kingdom
Ireland
Singapore
France
Norway

Australia
South Africa
Finland
Nigeria
Bermuda

Many more countries (29+) have partial Disclosure Laws, or variations (usually only applicable for AGM/EGMs).

In recent years there has also been a move by individual issuers to create their own version of Disclosure Laws – particularly when that issuer falls outside of a jurisdiction with a disclosure regime, or they decide they can't wait for their own regulatory authority to introduce a Disclosure Law.

These issuers have achieved this by building disclosure requirements into their Articles of Association or company by-laws. Whilst not as powerful as a country-level law, increasingly compliance departments at both the custodian bank and the institutional level have accepted that these laws do constitute a legitimate obligation to disclose their shareholder positions.

This is becoming quite a common exercise for companies, including some US companies who have introduced provisions into their by laws. These issuers have additionally listed in London, but because they are not UK registered, they are not be able to utilise Section 793 of the Companies Act.

Examples of companies that have introduced disclosure requirements into their Articles to obtain shareholder transparency are:

Randgold Resources (South Africa)

P&O

Bank of Ireland

Vimpelcom (Dutch/Russian)

Electric Geodesics (US)

Phrophotonix (US)

Verseon (US)

Halo Source (US)

From a regulators' perspective, it is common practice to impose a right to scrutinise an issuer's share register. Disclosure Laws are far more effective for policing market abuse and foreign control threats than by simply observing 13F filings.

CONCLUSION

There are clearly deficiencies with the ability of public data to provide true transparency into share ownership – even with the 13F threshold as it currently stands.

For the US to achieve better transparency of share ownership, whilst also protecting US investors' investment strategies, and guarding against foreign control threats, it needs to provide issuers with the only truly effective mechanism that exists: a Disclosure Law.

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ABOUT CMi2i

We are specialists in forensic capital markets intelligence, offering:

- Unparalleled forensic equity and debtholder identification
- Preparatory Risk Analysis
- Governance & Regulatory Analysis
- Share & bondholder outreach, mobilisation and vote solicitation

CMi2i provides the most accurate share/bondholder identification available due to our unique methodology. We work closely with institutions, corporates and their advisors and have provided insights on over 1000 Corporate Transactions, Proxy Battles and Activist Defences, where accurate owner & decision maker mapping and technical knowledge is a critical part of success.

CORE TEAM

The CMi2i core team have worked together for over a decade, performing bondholder and shareholder identification for issuers and institutions across the world. We have worked for more than 500 of the largest companies on corporate transactions, proxy battles and activist defences, and 1200 general meetings.



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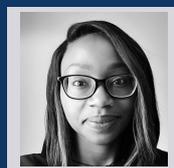
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