Zynerba
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September 16, 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 Zynerba Pharmaceuticals, Inc. ("Zynerba"), a publicly traded clinical stage specialty pharmaceutical company headquartered in Devon, Pennsylvania, I am writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers, as well as Zynerba's endorsement of the comment letter submitted by the National Investor Relations Institute (NIRI).

We join with the NASDAQ and NIRI, among others, in the belief that the SEC's proposal would result in a significant loss of market transparency to our company, as well as to other publicly traded companies in the United States. As stated in the NIRI comment letter, it would allow 89 percent of current 13F filers, in general, to go dark. The proposed rule would result in a similar impact across the biopharmaceutical sector. According to an analysis conducted on Zynerba's behalf by its IR and capital markets advisory firm, Westwicke, on July 17, 2020, of the 5,961 firms with an ownership interest in biopharmaceutical companies as of March 31, 2020, 87% would not be required to file a 13F under the Commission's proposed amendments to the Form 13F reporting rules. Using Zynerba as a specific example further clarifies the significance of the potential reduced market transparency on small and micro-cap biopharmaceutical companies. As of August 6, 2020, Zynerba had 29.3M shares of common stock outstanding. Of those, 8.4M shares (per 6/30/20 13F data) are held by 107 institutional holders who are currently required to file. If the proposed increase in the 13F threshold to $3.5 billion were to be finalized, only one institution holding 0.9M shares of our common stock would be required to file.

There is no existing remedy to such a drastic loss of market transparency. The 13F filings are the only accurate source of ownership information available to our company, as well as other U.S. issuers, and no sufficient alternatives exist. While 13F data is not as timely as it could be, it is the only data available that identifies which "street name" investors are buying or selling our shares each quarter.

This information cannot be fully replaced by hiring stock surveillance firms and using stock surveillance tools for several reasons. First, stock surveillance tools, which are used to estimate who may be buying or selling a company's outstanding shares, often incorporate inaccurate data, which must always be confirmed by 13F data. Without robust quarterly 13F data to rely upon for these confirmatory checks, the utility of such tools will be greatly diminished. Further, stock surveillance data alone does not enable companies to understand buying and selling in the broader markets or in relevant sectors, geographies, and peer groups. Finally, stock surveillance is cost-prohibitive; most micro- to small-cap companies do not purchase those data due to budget constraints.

The potential loss of market transparency associated with the proposed amendments to the Form 13F reporting rule would not be without consequence. If enacted, companies like ours will suffer detrimental impacts in the form of impaired engagement with shareholders and an increased risk for "ambush activism." The backdrop of the ongoing global COVID-19 pandemic makes these potential impacts even more troubling.

With respect to engagement with shareholders, we do not believe that the Commission has adequately considered our obligation to regularly confer with our investors throughout the year. We note that this obligation has only increased in the midst of the pandemic and that the Commission has urged public companies to "provide as much information as is practicable" to investors amid the market uncertainty caused by COVID-19.[1] We 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 conduct effective investor intelligence. We rely on quarterly 13F filing data to target investors for meetings and calls and base those decisions on a variety of screens performed on those data to determine (i) who owns/buys/sells our peers, (ii) what institutions are investing in our sector and companies in our geography, and (iii) what institutions are investing in companies doing work in similar areas of research. All of these data come from 13F filings, which are the only source available for such information. The Commission's proposed amendments would seriously jeopardize the robust engagement we require for our business by excluding more than 4,500 investment managers from disclosure, including a number of well-known hedge funds who fall under the proposed $3.5 billion threshold.

[1] 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.

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 of share price declines to amass larger stakes in potential target companies. 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 reduce research funding, alter the clinical targets we are pursuing, 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.[2] 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.[3] 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. Accordingly, we would be unable to monitor those activist investors who may "game the system" and use the increased lack of transparency for their benefit, contrary to that of our company's long-term shareholders.

While we agree that SEC should modernize its ownership disclosure rules, we believe that the potential negative impacts of this 13F proposal on our company's ability to engage effectively with our shareholders 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,[4] the

[2] 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.

[3] 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.

[4] 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).

adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,[5] and the proposed updates to SEC's rules on shareholder resolutions.[6]

For the foregoing reasons, we respectfully request that the Commission withdraw its proposed 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by NIRI, the NYSE Group, the Society for Corporate Governance, and Nasdaq.[7] 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.

Respectfully submitted,

Armando Anido
Chairman and Chief Executive Officer
Zynerba Pharmaceuticals, Inc.

[5] 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).

[6] 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.)

[7] 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.