



**John D. Neumann**  
Vice President, General Counsel and Secretary

September 23, 2020

**VIA EMAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

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 NACCO Industries, Inc. (NC), a mining and natural resources company headquartered in Cleveland, Ohio, I am 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 nearly 90 percent of current 13F filers to avoid reporting, would result in a significant loss of market transparency to our company and other publicly traded companies in the United States, and would add considerably to the current lack of transparency associated with the proliferation of dark pools, algorithmic and high-frequency trading and the 45-day lag with current 13F filing requirements. The proposed rule, if enacted, would impair engagement with shareholders, impede our ability to attract new long-term investors, and deprive us of timely information about activist hedge funds that take positions in our stock.

The 13F filings are the only accurate source of ownership information available to our company. While 13F data is not as timely as we would like, it is the only snapshot of data that we have that shows which "street name" investors are buying or selling our shares each quarter. This information cannot be fully replaced by hiring stock surveillance firms, at a sizable fee, which themselves rely on quarterly 13F data as a starting point for their research efforts.

While the proposal cites as a benefit the reduced burden for smaller asset managers, the reality is that technology advancements in the years since the 13F rule was issued make reporting markedly easier and have lessened the burden to the point it would not be unreasonable for these firms to report weekly, if not daily. To no longer require reporting of activity for funds below \$3.5B introduces an opaqueness to our markets that does not serve anyone well. As our markets, and

trading itself, become more complex with the evolution of technology and financial instruments, we need more transparency of information, not less.

We do not believe that the Commission has adequately considered the potential impact of this proposal on our company and our obligation to regularly engage in dialogue with our investors throughout the year. As a \$136M+ market cap company, we are particularly concerned about how the reduction in 13F transparency would impair our ability to identify our most active shareholders and engage effectively with them. We estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow approximately 28% of our current active 13F filers to evade disclosure. While some of our largest investors would continue to disclose shares held, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our company, the 13F data from the active investment managers and hedge funds under the proposed \$3.5 billion threshold is more valuable.<sup>1</sup>

### **Reduced Engagement Due to Lack of Transparency**

Our company uses 13F data to allocate the limited time of our investor relations personnel and our senior executives among the many requests that we receive from investors for one-on-one calls or meetings. We cannot say yes to every investor request, so we attempt to give priority to not only our largest investors, but also to those investors with smaller positions who are interested in increasing their holdings and who share the same long-term views as our senior management. With this proposed increase in the 13F threshold, we would not have visibility into this important subset of investors, denying us the opportunity to effectively allocate our limited time to important investors.

### **Negative Impact on Attracting New Investors**

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 information 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 build awareness of our business with investors that share the same values as management. Under the proposed threshold, the loss of transparency around who is holding, as well as buying/selling our shares each quarter, would hinder the ability of our company to continue to effectively target new investors.

---

<sup>1</sup> According to Edelman's financial communications practice group, 60 percent of activist asset managers would fall under the \$3.5 billion threshold. See *Jeremy Cohen and Jeff Zilka, Edelman*, "SEC Proposed Rule Change Is A Step Backwards for Shareholder Democracy," July 29, 2020, available at: <https://finance.yahoo.com/news/sec-proposed-rule-change-step-193708183.html>.

### **Increased Risk of Activism**

The Commission's proposal to significantly reduce 13F disclosures and thus transparency, is at odds with recent requests by the SEC that public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global COVID-19 pandemic.<sup>2</sup> Our need for ownership data is even greater during these uncertain times, when market volatility is high. Activist investors could take advantage of that volatility, using the increased lack of transparency and higher reporting threshold for their benefit and against the interests of long-term shareholders. The loss of 13F data under the proposed rule potentially exposes our company to a greater risk of activism by short-term-oriented fund managers, who may demand that we take actions that may not be part of our long-term strategy or the investment strategy of our long-term investors.

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 building a contentious position until 10 days after the fund crosses the 13D disclosure threshold and publicly surfaces with a 5 percent (or often more) position.

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 far outweighs 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,<sup>3</sup> the adjustments to the transition thresholds for

---

<sup>2</sup> 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.

<sup>3</sup> 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).

Ms. Vanessa Countryman  
September 23, 2020  
Page 4

companies that exit accelerated filer status and large accelerated filer status,<sup>4</sup> and the proposed updates to the SEC's rules on shareholder resolutions.<sup>5</sup>

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 the National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance, and Nasdaq.<sup>6</sup> 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 reducing the 45-day reporting period.

Regards,



John D. Neumann  
Vice President, General Counsel and Secretary  
NACCO Industries, Inc.

---

<sup>4</sup> 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).

<sup>5</sup> 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.)

<sup>6</sup> 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>.