

STIFEL

September 24, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

via Email:
rule-comments@sec.gov

Re: File Number S7-08-20; Reporting Threshold for Institutional Investment Managers, 85 Fed. Reg. 46016 (proposed July 10, 2020) (to be codified at 17 C.F.R. Parts 250 and 249) (the “Proposing Release”); Release No. 34-89290

Executive Summary: Stifel believes that the Commission should not revise the reporting threshold for Form 13F because increasing that threshold to \$3.5 billion would:

- eliminate an efficient source of information that is one of the most effective tools for issuers of 13(f) securities to identify investors and monitor investor engagement;
- have a disproportionate effect on small-capitalization companies who, on a relative basis, often rely more upon Form 13F data than other sources, such as investor relations firms or stock surveillance programs, to assist with these objectives; and
- not result in significant cost savings to investment advisors because the sophisticated portfolio management and reporting software currently employed by most investment advisors is generally utilized for other regulatory purposes as well, which reduces the incremental burden of assembling the data to be filed on Form 13F.

Ladies and Gentlemen:

Stifel, Nicolaus & Company, Incorporated (“Stifel”) is a full service retail and institutional wealth management and investment banking firm and is a registered broker-dealer and registered investment advisor. Stifel is a wholly owned subsidiary of Stifel Financial Corp. (NYSE: SF), a financial holding company, and is affiliated with broker-dealers, registered investment advisors, retail and commercial banks and trust companies. Stifel appreciates the opportunity the Securities and Exchange Commission (the “Commission”) has given for public comment on the proposed rule amending Form 13F to, among other things, revise the reporting threshold for Form 13F from \$100,000,000 to \$3.5 billion.

STIFEL FINANCIAL CORP.

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Stifel believes that, along with other full service financial services firms, it is in a position to understand the benefits and detriments of revising the reporting threshold. As a full service retail financial advisory firm, Stifel provides financial advisory services to approximately 1 million advisory and brokerage accounts with assets under management of over \$300 billion. A number of these retail investors and their financial advisors may use information disclosed pursuant to Form 13F to determine potential investment opportunities based upon disclosed investment by institutional investors.

Additionally, Stifel is a leading mid-market investment bank, providing its clients with services with respect to M&A advisory, general advisory, debt capital markets and equity capital markets. Although Stifel has a diverse range of clients across all capitalizations; Stifel's investment banking practice franchise is a market leader with respect to small-capitalization companies.¹ Stifel's investment banking clients rely on Form 13F information to identify their largest institutional investors, to determine how to allocate the time and resources of their senior management for investor meetings and to determine strategies and opportunities for capital raising, including identifying potential investors. Stifel is also affiliated with three registered investment advisors, each of which currently files Forms 13F and one of which would no longer be required to file Forms 13F if the reporting threshold is increased to \$3.5 billion.

Stifel writes in opposition to the revision of the reporting threshold for Form 13F to \$3.5 billion and believes that such a revision to the reporting threshold would result in an adverse impact on the 13(f) disclosure program's three primary goals, including a disproportionate impact on available information regarding small-capitalization companies.

Stifel believes that revising the reporting threshold to \$3.5 billion, as proposed, and permitting 89.2% of current Form 13F filers to cease filing would have a negative impact on each of the three primary goals of the section 13(f) disclosure program as noted in the Proposing Release.² Although the Commission notes in the Proposing Release that "under the proposed amendments, the aggregate value of section 13(f) securities reported by managers would represent approximately 75% of the U.S. equity market as a whole, Stifel believes that exempting nearly 90% of current filers substantially reduces transparency and the data available to market participants.

¹ Together with its affiliate, Keefe, Bruyette & Woods, Inc., Stifel is the largest provider of U.S. small and mid-cap equity research coverage. Additionally, Stifel has ranked:

- 1st in all managed equity deals since 2010 for equity transactions less than \$500 million market cap;
- 1st in all managed equity deals since 2010 for equity transactions less than \$1 billion market cap;
- 1st in bookrun equity deals since 2010 for equity transactions less than \$500 million market cap;
- 6th in bookrun equity deals since 2010 for equity transactions less than \$1 billion market cap; and
- 1st among middle-market investment banks for public M&A transactions under \$1 billion.

² The Proposing Release states that the three primary goals of the section 13(f) disclosure program are: (1) to create a central repository of historical and current data about the investment activities of institutional investment managers, (2) to improve the body of factual data available regarding the holdings of institutional investment managers and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence, and (3) to increase investor confidence in the integrity of the U.S. securities markets.

As the Commission notes in the Proposing Release, the pool of users of Form 13F data has expanded to include many parties that were not originally contemplated, including the issuers of 13(f) securities, academics, market researchers, and market participants, including investment managers. As has been noted in comments to the Proposing Release from a number of issuers of 13(f) securities, these issuers use this data for a variety of reasons, including (1) identifying and engaging with long-term investors, including allocating management resources to focus on an issuer's most important investors, and (2) monitoring the activity of potential activist investors. Stifel also notes that many of its issuer clients use Form 13F data to assist in determining strategy for capital raising, including identifying potential investor classes or individual investors, and measuring effectiveness of outreach efforts to such potential investors.

Without taking into account the detrimental effects of the proposed revision to the reporting threshold on other categories of users of Form 13F data, the loss of one of the most effective tools for issuers of 13(f) securities, including investment banking clients of Stifel, to identify investors and monitor investor engagement argues for the withdrawal of the proposed rule change, and Stifel concurs with the many comment letters submitted by or on behalf of issuers of 13(f) securities opposing the proposed threshold revision.³ Similar to other issuers who have submitted comments and Stifel's issuer clients, Stifel would lose significant visibility into its institutional investor base as 128 of the 358 current Form 13F filers who report holding Stifel stock would not be required to report pursuant to the proposed \$3.5 billion reporting threshold.

Stifel also notes that the proposed amendment would have a disproportionate effect on available information regarding small-capitalization companies. Using the small cap mutual fund universe as a proxy for institutional investment in small-capitalization companies, we

³ Due to the volume of comment letters submitted with respect to the proposed rule, we only cite a number of the comment letters received from issuers of 13(f) securities in the last month; please see Comment Letter of Wendy Wilson, dated September 7, 2020 (on behalf of Orion Engineered Carbons); Comment Letter of Russell T. Tiejema (submitted by Joanne Freiburger), dated September 4, 2020 (on behalf of Masonite International Corporation); Comment Letter of Bob Houghton, dated September 4, 2020 (on behalf of United Natural Foods); Comment Letter of Deborah Choate, dated September 3, 2020 (on behalf of Sequans Communications); Comment Letter of David C. Adams, Chairman and Chief Executive Officer, Curtiss-Wright Corporation, dated September 3, 2020; Comment Letter of Ajay Sabherwal, Chief Financial Officer, FTI Consulting, dated September 3, 2020; Comment Letter of Richard M. Carson, Senior Vice President and General Counsel, Cypress Environmental Partners, L.P., dated August 28, 2020; Comment Letter of Chad Reed, Vice President, IR and ESG and Jeffrey A. Lipson, Executive Vice President and Chief Financial Officer, Hannon Armstrong, dated August 23, 2020; Comment Letter of Karen Bauer, dated August 21, 2020 (on behalf of Badger Meter, Inc.); Comment Letter of Stephen R. Purtell, Six Flags Entertainment Corporation, dated August 21, 2020; Comment Letter of Stephen P Weisz, President & CEO, Marriott Vacations Worldwide Corporation, dated August 21, 2020; Comment Letter of Elijio V. Serrano, CFO, CSI Compressco LLP, dated August 19, 2020; Comment Letter of Elijio V. Serrano, Senior VP and CFO, TETRA Technologies Inc., dated August 19, 2020; Comment Letter of Jack Maurer, Vice President, Public Affairs and Investor Relations, Ingevity Corporation, dated August 13, 2020; Comment Letter of John Chironna, Vice President, Investor Relations and Treasurer, MSC Industrial Supply Co., dated August 13, 2020; Comment Letter of Brian Miller, Executive Vice President and CFO, Tyler Technologies, dated August 13, 2020; Comment Letter of Mark Miles, Chief Financial Officer, dated August 13, 2020 (on behalf of Berry Global Group, Inc.); Comment Letter of Charles R. Kraus, Senior Vice President, General Counsel & Corporate Secretary, DIRT Environmental Solutions, dated August 12, 2020; Comment Letter of Paul DeSantis, Chief Financial Officer, dated August 11, 2020 (on behalf of Neenah, Inc.); Comment Letter of Heather Kos, Vice President Investor Relations, Univar Solutions, dated August 10, 2020.

believe that not revising the Form 13F reporting threshold of \$100 million would be the most appropriate action to maintain the balance of providing sufficient Form 13F data to the myriad users of such data and limiting potential negative effects on institutional managers. Based upon our research, Stifel identified 512 small cap mutual funds (inclusive of small cap growth, small cap value and small cap core funds, as well as microcap funds) with total assets of \$534.25 billion, average assets of \$1.04 billion and median assets of \$266.8 million. Using the proposed reporting threshold of \$3.5 billion, only 36 of the 512 funds would be required to report on Form 13F. These funds would represent only \$287.4 billion, or 54% of small cap assets, far short of the 75% of the U.S. equity market as a whole.

Furthermore, Stifel was formerly affiliated with an investment advisor with a small cap focus; this investment advisor intended to cap its funds at \$3 billion in investable assets as it felt that as a small cap advisor, that was the maximum amount of assets it could invest without altering its investment strategies or its funds' liquidity. Thus, a \$3.5 billion reporting threshold may fail to capture fully mature small cap investment advisors. As a result, small cap companies would be substantially underrepresented in the Form 13F data. Furthermore, Stifel believes that small capitalization companies in particular rely upon Form 13F data for these purposes as these companies oftentimes do not have the wherewithal that mid or large capitalization companies have to engage investor relation firms, stock surveillance programs or other assets to assist with these objectives.

As previously stated, Stifel is affiliated with three other registered investment advisors, each of which currently files Forms 13F and one of which would no longer be required to file Forms 13F if the reporting threshold is increased to \$3.5 billion. Following discussions with personnel of its affiliated registered investment advisors, Stifel believes that investment managers with \$100 million under management are capable of shouldering the compliance burden of filing reports on Form 13F, particularly given the sophisticated portfolio management and reporting software utilized by most investment advisors. This software is already utilized for other regulatory purposes by advisors and decreases the burden of assembling the data to be filed on Forms 13F.

For the reasons set forth above, Stifel believes that the Commission should not revise the reporting threshold for Form 13F. If the Commission does determine to revise the reporting threshold for Form 13F, Stifel strongly believes that the reporting threshold should not be raised above approximately \$250 million, which is the median fund size for small cap mutual funds and above which more than 50% of small cap mutual funds would not be required to report on Form 13F.

As we continue our business of creating and preserving wealth for the American people, Stifel stands ready to work with the Commission to determine other approaches by which the Form 13F program can be modernized and made more effective.

Sincerely,

Stifel, Nicolaus & Company, Incorporated