



September 28, 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:

MEI Pharma, Inc., a publicly traded company (Nasdaq: MEIP), appreciates the opportunity to offer comments to the above-referenced proposed rule change regarding the 13F reporting rules for institutional investment managers.

The Commission's interest in modernizing 13F reporting is appreciated and MEIP agrees that the reporting structure for institutional investment managers warrants a comprehensive review and update. However, any proposals should be consistent with the SEC's mission of protecting investors, maintaining fair, orderly and efficient markets, as well as facilitating capital formation. As the SEC itself notes, as more investors turn to the markets to help secure their futures, to pay for homes and to send children to college, that mission becomes more compelling than ever.

Sadly, the proposed rule changes do not only fail to support the SEC's mission, but in fact would degrade the order with which the SEC is charged with protecting, unambiguously damaging public companies, the investing public, as well as the markets more broadly. The implications to small-cap public life sciences companies like MEIP with market capitalizations of \$1 billion or less, of which there are more than 400 such companies, are significant and debilitating, and include:

- Distortion of equity valuations
- Diminished investor engagement due to lack of transparency
- Negative impact on capital formation
- Enhanced risk of activism

For these reasons as more fully explained below, we strongly urge the Commission to withdraw the proposal at issue and instead consider reforms that would advance the SEC's stated mission. We propose the Commission consider the common-sense reforms that were detailed in rulemaking petitions submitted by the National Investor Relations Institute (NIRI), the New York Stock Exchange Group, the Society for Corporate Governance, and Nasdaq. Rather than allow 89 percent of current 13F filers to hide their investments in public companies, we urge the Commission to reduce the archaic 45-day reporting period, require 13F filers to disclose short positions, and support legislation to provide for monthly disclosure.

Distortion of Equity Valuations

It is widely known and recognized that smaller institutional investors, controlling a minority of funds invested in public equities, are the main determiners of share price and hence equity valuations. These smaller institutional investors generally have moderate and high turnover rates – and perhaps are more aptly referred to as “traders.” Their effect on equity valuations was recently



confirmed in a publication by researchers from the University of Chicago, Becker Friedman Institute for Economics and NYU Stern School of Business. Among its findings, the publication states:

We find that hedge funds and small, active investment advisors are most influential per dollar of assets under management, while long-term investors, such as pension funds and insurance companies are least influential.¹

This is highly relevant with respect to the proposed rule change because, paradoxically, it will only be the larger, generally longer term investors that are not instrumental in driving valuations that will be required to file if the proposed rule change takes effect.

The potential harm to equity valuations can be clearly illustrated by a quick look at MEIP's institutional investor base. MEIP's institutional investor base as of the June 30, 2020 filing date, the latest available, shows that about 50% (48.17%) of MEIP's institutional holders do not meet the \$3.5 billion proposed filing threshold. While losing visibility into half our MEIP's institutional investor base is alone shocking, the characteristics of the investors that will avoid filing if the proposed rule change goes forward are particularly disturbing. Almost all the sub \$3.5 billion institutional investors are active investors (or "traders").

This means that a group of institutional investors constituting a minority of shareholders, owning only 32.37% of all MEIP stock, will be the main determinants of equity valuation for all MEIP shareholders while shielded from any transparency if the proposed rule were to take effect.

From only this limited summary of MEIP's investor holdings it is clear that if the proposed rule were to take effect, this minority of "traders" that are the determinants of equity valuations for publicly traded companies would avoid transparency in a market system that theoretically strives for transparency to support efficient markets and protect individual investors. The markets should not shield a minority of institutional investors that manage a minority of the funds investing in the public markets intended to have an even playing field for all investors and in the process potentially distort market valuations by decreasing transparency and thus market efficiency.

Just this alone should dissuade the SEC from implementing the proposed rule change because it contradicts its mission and will support distortions of market equity valuations. But there are additional reasons to prevent the SEC from implementing the proposed rule change, including for the reasons that follow.

Diminished Engagement Due to Lack of Transparency

As noted above, MEIP's institutional investor base as of the June 30, 2020 filing date shows that about 50% of MEIP's institutional holders do not meet the \$3.5 billion proposed filing threshold. Consequently, it is clear even after a cursory look and this simple analysis, MEIP will lose visibility into about half of institutional investor base.

But, as also noted above, the group of institutional investors that will avoid reporting if the proposed rule takes effect is the minority of smaller institutional investors that are most impactful

¹ Koijen, Ralph S. J. and Richmond, Robert and Yogo, Motohiro, *Which Investors Matter for Equity Valuations and Expected Returns?* (June 11, 2020). University of Chicago, Becker Friedman Institute for Economics Working Paper No. 2019-92, NYU Stern School of Business, Available at SSRN: <https://ssrn.com/abstract=3378340> or <http://dx.doi.org/10.2139/ssrn.3378340>



in establishing equity values. Not being able to identify the investors that are the main determinants of stock price will have a debilitating effect on being able to communicate efficiently, address the interests and concerns of an influential group of investors in a manner that complies with best practices for investor relations and supports fair equity valuations.

Additionally, MEIP uses 13F data to allocate the limited time of our senior executives among the many requests that we receive from investors for one-on-one calls or meetings. We cannot possibly say yes to every investor request to speak with our senior management, so we try to give priority to not only our largest investors and fund managers with a track record of activism but also those shareholders with smaller positions who are interested in increasing or maintaining their holdings in our company. With this proposed increase in the 13F threshold, we would not have visibility into this important group.

Negative Impact on Capital Formation

The loss of 13F data also would impede our company's ability to attract institutional investors. Like many other issuers, we use 13F filings to identify potential shareholders (such as those who have invested in similar companies), build a diversified shareholder base, and to measure the effectiveness of our outreach efforts to prospective investors. These practices are essential for our company to effectively access the capital markets, grow our business and build value for all shareholders – including those outside the minority of our institutional investors under the \$3.5 billion threshold of the proposed rule change.

Under the proposed threshold, the loss of transparency around who is holding as well as buying our shares each quarter would hinder the ability of our company to continue to compete for and raise growth capital. As required by the agency's mission, the SEC should fully consider the impact on capital formation, particularly for companies with smaller market capitalizations more likely to have smaller institutional investors as shareholders than larger capitalization companies, before proceeding with this rulemaking. If the rule were to go forward capital formation for the smaller companies, which are often the source of important innovations, would be severely and negatively impacted.

Enhanced Risk of Activism

The Commission's proposal to significantly reduce 13F disclosures also is at odds with recent requests by the SEC that we and other public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global COVID-19 pandemic.² 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. Under the proposed \$3.5 billion threshold, we would be unable to monitor those activist investors who would be exempt from reporting their positions, thus "gaming the system"

² 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.



and using the increased lack of transparency for their benefit and not that of our MEIP's long-term shareholders.

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 eliminate jobs, reduce research funding, increase share buybacks, 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.³ 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.⁴

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.

While we agree that SEC should modernize its ownership disclosure rules, 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 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,⁵ the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,⁶ and the proposed updates to SEC's rules on shareholder resolutions.⁷

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

³ 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>.

⁴ 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>.

⁵ 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).

⁶ 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).

⁷ 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.)



National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance, and Nasdaq.⁸ 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.

Sincerely,

DocuSigned by:
Daniel P. Gold
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Daniel P. Gold, Ph.D.
Chief Executive Officer
MEI Pharma, Inc.

⁸ 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>.