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September 28, 2020

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

Submitted via email: rule-comments@sec.gov

Re: Reporting Threshold for Institutional Investment Managers
Release No. 34-89290 / File No. S7-08-20[1]

Dear Ms. Countryman:

Bloomberg L.P.[2] respectfully submits this letter in response to the above-referenced proposal by the U.S. Securities and Exchange Commission ("SEC" or the "Commission") to update the reporting threshold for Form 13F reports by institutional investment managers and make other targeted changes (the "13F Proposal").

Overview

The SEC proposes to change the minimum reporting threshold for Form 13F reports by institutional investment managers from $100 million in U.S. equities under management to $3.5 billion and to make certain technical amendments, including requiring filers to provide additional identifying information such as security identifiers, among others. While the 13F Proposal cites the need to modernize 13F filing requirements to account for the lack of change since 1975, raising the reporting threshold would eliminate the obligation to report for nearly 90% of investment managers currently required to file 13F reports without adequately considering the impact of loss of such data to market participants. As detailed below, the 13F Proposal lacks substantive analysis of costs and benefits on what it is proposing to do. While Bloomberg supports the Commission's stated goals of improving the data on holdings of institutional investment managers and increasing investor confidence in the integrity of the U.S. securities

[1] Reporting Threshold for Institutional Investment Managers, SEC Exch. Act Rel. No. 34-89290 (July 10, 2020), *available at* https://www.sec.gov/rules/proposed/2020/34-89290.pdf ("13F Proposal").

[2] Bloomberg – the global business, financial information, and news leader – increases access to market data by connecting market participants of all stripes to a dynamic network of information, people, and ideas. The company's strength – quickly and accurately delivering data, news, and analytics through innovative technology – is at the core of the Bloomberg Terminal. The Terminal provides financial market information, data, news, and analytics to banks, broker-dealers, institutional investors, government bodies, and other business and financial professional worldwide.

markets, raising the reporting threshold is contrary to those objectives because it actually decreases transparency in the markets and will lead to diminished investor confidence.

While Bloomberg opposes raising the holdings threshold, we do applaud the SEC's raising the question of whether filers should be able to use other suitable identifiers – including the Financial Instrument Global Identifier ("FIGI") – instead of being required to use CUSIPs. We would answer with a resounding "yes". Not surprisingly, a regulatory mandate to use a particular product tends to raise costs and diminish innovation. Competition in the provision of identifiers should be encouraged, not only in the context of this proposal, but across the board. Presently, regulations too often preclude, rather than encourage, this constructive competition. We appreciate the Commission raising this important issue.

Increasing the Minimum Reporting Threshold for Form 13F Decreases Market Transparency

Increasing the reporting threshold to $3.5 billion means that nearly 90% of investment managers currently required to file Form 13F would become exempt from reporting duties.[3] This significantly reduces market transparency by eliminating access to information managed by 4,500 institutional investment managers overseeing $2.3 trillion in assets.[4] While the proposal aims to update reporting standards so they apply to the same proportion of the market as they did when Rule 13f-1 was first created in 1975, it lacks a viable cost-benefit analysis to justify decreasing public access to market data. It also reduces reporting obligations for some asset managers at the expense of public investors at a time where greater market transparency and access to information is more important than ever.

Bloomberg shares Commissioner Allison Herren Lee's concerns that the 13F Proposal fails to provide a thorough economic analysis of the proposed amendments and overestimates the compliance costs of the current filing requirement.[5] While the SEC cites reducing regulatory burdens, compliance costs, and the risk of front running and copycat investing for what classifies as "small" investment managers[6] as reasons for eliminating their reporting requirements, there is

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[3] *See* 13F Proposal at 18.

[4] *See* NIRI Executive Alert, "SEC Proposes to Reduce Equity Ownership Transparency" (July 13, 2020), *available at* https://www.niri.org/NIRI/media/NIRI/Executive-Alert/NIRI-Executive-Alert_-SEC-Proposes-to-Reduce-Equity-Ownership-Transparency-7-13-2020.pdf.

[5] *See* Commissioner Allison Herren Lee, "Statement on the Proposal to Substantially Reduce 13F Reporting," July 10, 2020, *available at* https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10 ("July 2020 Commission Lee Statement").

[6] Under the terms of the 13F Proposal, "smaller" investment managers would encompass those with less than $3.5 billion in equities under management. The Commission's 1971 Institutional Investor Study Report – conducted at the direction of the Congress and ultimately led to the creation of the 13F reporting requirement and threshold – classified an advisory firm as "large" if it provided advice for more than $100 million of advisory assets as of December 31, 1969. All other advisory firms were classified as "small". *See* Institutional Investor Study Report of the Securities and Exchange Commission, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. (1971), *available at* http://3197d6d14b5f19f2f440-

no concrete analysis provided by the 13F Proposal to justify those reasons. The 13F Proposal suggests that Form 13F data of smaller asset managers may more likely be used by other market participants to engage in potentially damaging behavior. However, there is no empirical data to support the suggestion that smaller managers are harmed more than larger managers by frontrunning or copycat investing. In addition, 13F filing takes place after the purchase occurs and with a 45-day lag after quarter-end, which makes frontrunning unlikely and invalidates this concern. Therefore, there is no justification for reducing transparency by reducing smaller asset managers' reporting obligations over those of larger managers.

The 13F Proposal also argues that protecting smaller asset managers from potentially harmful behavior by eliminating the 13F filing requirement would allow smaller managers to compete with larger managers by leveling the competitive field, and investors may subsequently benefit.[7] Yet, there is no quantifiable analysis on what those benefits would be and whether they would outweigh the costs associated with decreased transparency in market data. In addition, private funds with at least $150 million in assets under management are still required to report asset holdings in Form PF under the Dodd-Frank Act.[8] Eliminating the13F reporting obligation would not necessarily reduce costs for the smaller asset managers because they still have to file Form PF, although the frequency of the Form PF reporting depends on the size of the fund. Form PF information is not made publicly-available. Eliminating a vast majority of the 13F filers by raising the reporting threshold will give the SEC a narrower pool of data to conduct risk-based examinations for asset concentration, while taking away transparency from the investing public.

13F data is also critical for issuers in understanding their shareholders and promoting shareholder engagement, but the 13F Proposal does not discuss how these issuers would be impacted by the proposed changes and what costs they would have to bear as a result. There is a similar lack of consideration given to the pool of users of 13F data that the Commission acknowledges to include academics, market researchers, the media, attorneys pursuing private securities class-action matters, market participants, and even the Commission itself.[9] Even though the 13F Proposal concedes that 13F data can be used to assist individuals in making investment decisions, investment managers managing assets, and corporate issuers interested in determining the beneficial holders of their publicly-traded stock, there is no analysis on how

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5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1970/1971_0310_SECInstitutionalInvestor_25.pdf, at 64 n.1 ("Institutional Investor Study").

[7] *See* 13F Proposal at 39.

[8] New registration and reporting requirements for private fund advisers under the Dodd-Frank Act have allowed the SEC to gather considerable data on these advisers and their funds to increase transparency and protect investors. In her October 2015 keynote address at the Managed Fund Association, then Chair of the SEC Mary Jo White remarked that "excessive leverage, lack of liquidity, and asset concentrations have in the past been at the root of financial crises, and we now have the regulatory tools to help better identify and appropriately mitigate potential problems." *See* Chair Mary Jo White, "Keynote Address at the Management Fund Association: 'Five Years On: Regulation of Private Fund Advisers After Dodd-Frank,'" October 15, 2015, *available at* *https://www.sec.gov/news/speech/white-regulation-of-private-fund-advisers-after-dodd-frank.html*.

[9] *See* 13F Proposal at 22.

these users would be impacted by eliminating their access to data. It is ill-advised to eliminate a large swath of currently available information to the detriment of market transparency, especially in the absence of any real analysis that examines the impact of the 13F Proposal to the markets and market participants as a whole.

Rationale for the Current 13F Threshold

In proposing to raise the $100 million reporting threshold, the SEC cites the costs and burdens associated with reporting for small managers and unchanged reporting threshold since the inception of the reporting requirement. However, both the statutory language and legislative record of section 13(f) of the Securities Exchange Act of 1934 show that the statute actually intended to "require, on a continuous basis, reports and disclosures from *all* types of institutional investors" (emphasis added).[10] In fact, the 1975 Amendments Senate Report cited by the 13F Proposal suggests that the $100 million threshold was initially set as a temporary measure in consideration of reporting costs and burdens, as it states that, by "limiting initially the impact of the reporting provisions to the largest institutional managers, the institutional disclosure program could be implemented rapidly with the least amount of unnecessary costs and burdens."[11] The 1975 Amendments Senate Report refers to the $100 million threshold as an "initial" level and notes that the Commission could lower the threshold to as low as $10 million.[12] This shows that the intent behind 13F reporting requirement was to decrease the reporting threshold over time to capture holdings information from all types of institutional investors, whether small or large, not to increase it.

In fact, the Commission may lack the authority to raise the reporting threshold to over $100 million based on the statutory text of section 13(f) reporting requirements. As also noted by Commissioner Lee, a plain reading of the rule permits the SEC to lower the threshold but does not grant similar authority to raise it.[13] The possible lack of the Commission's authority to raise the reporting threshold – supported by legislative history of section 13(f) as discussed above – is not addressed by the 13F Proposal.

Public Demand for 13F Information

As acknowledged in the 13F Proposal, the pool of users of 13F data has expanded over the years to include not only regulators and the public, but also academics, market researchers, the media,

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[10] *See* Filing and Reporting Requirements Relating to Institutional Investment Managers, Exchange Act Release No. 14852 (June 15, 1978) [43 FR 26700, 26701 (June 22, 1978), *available at* https://tile.loc.gov/storage-services/service/ll/fedreg/fr043/fr043121/fr043121.pdf ("13F Adopting Release").

[11] *See* Securities Act Amendments of 1975: Hearings on S. 249 before a Sub Comm. of the Senate Comm. on Banking, House and Urban Affairs, 94th Cong., 1st Sess. (S. Report No. 94-75) (1975), at 86 ("1975 Amendments Senate Report").

[12] *Id.* at 86.

[13] *See* July 2020 Commissioner Lee Statement.

attorneys pursuing private securities class-action matters, and market participants, including institutional investors themselves, who use data to enhance their ability to compete.[14] There is a wide demand for the data, especially in an economic climate where greater transparency in the markets is being demanded.

At Bloomberg, we certainly see the wide and consistent demand for this data. 13F data is used in many Bloomberg applications and products. Our clients on both the buy-side and sell-side require 13F data in their daily workflows to help review filings, individual holdings changes, aggregated holdings data, to help drive business, and to facilitate competitor, company and historical analysis. Indicative of the critical utility of this data, during the four annual peak filing seasons consumption of 13F data can increase by over 500%.

Providing Information and Possible Use of Competing Identifiers

While there are insufficient reasons to support raising the reporting threshold as currently contemplated by the SEC, its proposal to require filers to provide additional identifying information is a step in the right direction to modernize 13F disclosures. The SEC proposes to allow a 13F filer to provide its number assigned by FINRA's Central Registration Depository ("CRD") system or by the Investment Adviser Registration Depository ("IARD") system, as well as its SEC filing number, so that the users of 13F data would be able to identify a filer's other regulatory filings and the interrelationships between managers who share investment discretion over reportable securities more easily.[15] The 13F Proposal also considers allowing alternatives to CUSIP number such as the FIGI for each security. Rather than to specify the use of a particular identifier, the Commission should let filers choose the identifier to be reported in Form 13F by setting out the appropriate metrics for their use. These identifiers would add value to the 13F data by increasing visibility and quality of 13F data for its users, thereby increasing market transparency. Specifically for regulators and others that consume such reporting, enabling the use of open data would greatly serve the transparency needs and access to basic, descriptive information by individual investors, small businesses, and national, local and regional jurisdictions.

There are numerous identification systems for financial instruments in place, and many times these are embedded within firms' infrastructure, typically because of legacy technology practices and prior lock-in to a specific identifier forced by a data provider. This fact is many times used as reason "not to change". As a data provider, this is something we have looked to change in the marketplace as it works against better quality data and innovation. The key is to provide a method of interoperating with legacy systems while improving functionality with new systems. Bloomberg has long been a proponent of the FIGI, a flexible identifier that catalogs financial instruments across global asset classes. Developed by Bloomberg, the FIGI accounts for many types of financial instruments that arise, expire, and change on a daily basis. The FIGI is available free of charge for use by all market participants unlike other similar identifiers that may

[14] *See* 13F Proposal at 22.

[15] *See id.* at 34.

generate a licensing fee for users. Bloomberg placed FIGIs into the public domain with no commercial terms or restrictions on usage. The FIGI is currently managed by the Object Management Group, an independent computer industry standards consortium.[16]

FIGI enables interoperability between other identification systems and does not force use of a single identification system. Enabling interoperability between different identifications systems has an onward effect of lower costs when interacting between legacy systems that may be dependent upon a single identifier and newer systems that have more modern architecture approaches. Interoperability lowers complexity, dependencies, and costs of interacting with inflexible legacy systems, managing data and data quality, and sharing critical and universal information.

By allowing users choice, the issues surrounding licensing and de facto monopolies may finally be addressed. It is inconceivable that the core data necessary to operate in financial services - that of exchanging an asset between entities – carry material costs to simply name those two things with no other value add than a code and a name. For example, the Legal Entity Identifier (LEI), a non-proprietary data element, has partially addressed this on the identification of entities on government contracting data. Indeed, obstacles to the use of LEI – such as mandates to use the Data Universal Numbering System (DUNS) for government reporting which carries licensing fees – drew deserved criticism. However, the problem for investors relating to identifiers for instruments is even worse than for entities, as the licensing and costs associated with mandated, licensed, and restricted use of identifiers in the financial instrument space dwarf the industry costs and concerns that surrounded the DUNS number licensing. Providing alternatives to the industry, based on open data principles like the MIT Open Source license that does not restrict noncommercial nor commercial use of the data, provides methods for the industry to shed unnecessary costs and encourage innovation and transparency, especially where those other identifiers may serve better purpose, or provide additional functionality. Market forces can make the correct determination regarding different licensing methods that restrict use, or may allow restrictions in commercial applications, like the Creative Commons license. Regardless, not allowing optionality effectively creates a regulatory compulsed monopoly by forcing the industry to use a single, licensed, and restricted identification system.

CUSIPs change and are re-used over time. CUSIP numbers change for a variety of reasons, including simple name changes. This can have significant impact in traceability. The base of the CUSIP is meant to identify a specific issuer, but due to the code structure, one issuer may have multiple different "base" codes – perhaps hundreds. All the base codes for a single entity would need to change for a name change, and therefore every instrument based on those base codes will change. Year to year, the same instrument may then be reported on the Form 13F under different identifiers, creating data quality issues, transparency issues, traceability problems, and making oversight and analysis impossible. Further, since a "matured" CUSIP can be re-used in the future, this may create false linkages, further complicating matters. FIGI, by contrast, does not change over time and can actually be utilized in data lineage to capture the different identifiers

[16] *See* Bloomberg ID Symbology Factsheet, *available at* https://web.archive.org/web/20120617020536/http://cdn.gotraffic.net/enterprise/pdf/id_symbology_fact_sheet.pdf.

that exist, over time, to identify the same financial instrument. Additionally, it can be used as a sanity check on identifiers that are re-used.

In addition, CUSIPs do not cover the entirety of the financial instruments to be reported. Options, specifically, and other instrument types are not covered by CUSIP numbers. As such, reporting is done typically using the CUSIP of the listed equity. This is not an accurate representation for the purposes of 13f reporting of exposures, risks, and actual holdings. There are other identifiers, such as FIGI, as well as others that provide broader and more accurate coverage in many of these asset classes. In considering the best data quality to be provided to the SEC and the industry to perform functions related to the 13F data, permitting managers to choose the data identifiers they use would be beneficial to the industry as a whole, in regards to transparency, increased data quality, removing unnecessary and burdensome costs, and enabling competition.

Conclusion

For all of the reasons discussed above, we urge the SEC to withdraw the 13F Proposal. Any and all amendments to Rule 13F should be made in consideration of enhancing transparency and accountability in the markets, yet the current 13F Proposal actually decreases transparency. The 13F Proposal does contain some elements that are moving in the right direction toward modernization, such as allowing filers to potentially have the option to choose a security identifier as a part of disclosure, rather than to mandate a specific identifier, and the SEC should explore these options not only in this context, but across the board. We appreciate the Commission's willingness to consider comments on the 13F Proposal and would be pleased to discuss any questions that the Commission may have with respect to this letter. Thank you.

Very truly yours,

Gregory Babyak
Global Head of Regulatory Affairs, Bloomberg L.P.