September 29, 2020

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

Re: Proposed Rule: Reporting Threshold for Institutional Investment Managers; Release No. 34- 89290; File No. S7-08-20

Ms. Countryman:

The National Mining Association ("NMA") appreciates the opportunity to submit comments on the U.S. Securities and Exchange Commission's ("SEC") proposed rule, "Reporting Threshold for Institutional Investment Managers." 85 Fed. Reg. 46,016 (July 31, 2020). NMA is a national trade association whose members include the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions, and other firms serving the mining industry. Among NMA's members are publicly traded companies listed in the United States that will be directly impacted by the proposed rule. NMA's members regularly use the information filed quarterly by institutional investment managers in the 13F reports for multiple purposes, including in effectively managing their investor relations programs and supporting capital formation and long-term growth for their businesses.

NMA strongly opposes the SEC's proposal to increase the Form 13F reporting threshold for institutional investment managers from $100 million to $3.5 billion. Raising the threshold to $3.5 billion would eliminate reporting for over 89 percent of all current filers. For example, under the reduced threshold only 549 of the 5,293 institutions who filed 13Fs in the first quarter would file in 2020. As Commissioner Allison Heren Lee rightfully recognized in her public statement opposing the proposal, the SEC would drastically reduce the number of 13F filers and in turn negatively impact public access to market information and constrain financial transparency.[1]

[1] *See* Commissioner Allison Heren 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.

The SEC missed an opportunity with this rulemaking to increase transparency and visibility of markets and holdings. SEC failed to heed the calls of investors and companies to truly modernize this reporting program by reducing the reporting period from 45 days to 15 days, changing the reporting frequency to monthly, or requiring the disclosure of short positions, and other reforms that would provide real benefits to publicly traded companies and other stakeholders. Instead, the SEC is proposing a rule that benefits a limited segment of investment managers and those benefits are estimated to be only $15,000 to $30,000 annually per institution. The benefits of the proposal clearly do not outweigh the drawbacks of eliminating important information relied upon by companies and U.S. issuers for decades. If promulgated, the SEC will impede a company's ability to engage with shareholders and attract new long-term investors, as well as deprive companies of important and timely information about activist hedge funds and other activist investors.

SEC's Proposal Will Significantly Reduce Transparency

The 13F reports provide the best and only reliable source of ownership information to publicly traded companies. As the Commission knows, shareholders generally are not required to publicly identify themselves unless they beneficially own more than 5 percent of a public company's outstanding shares. This scenario is not typical, making Form 13F the sole source of public information for many companies. Without 13F data, companies may not realize that activist funds are plotting a proxy contest until one of those funds triggers the 13D disclosure threshold and surfaces with a 5 percent (or more) position. For many companies, the 13F data from more active investment managers under the $3.5 billion threshold is the most valuable, especially for small and mid-cap issuers. The information found in 13F reports cannot simply be replaced by hiring stock surveillance firms as even these companies rely on the quarterly 13F data in their research efforts. Moreover, for smaller companies, stock surveillance services are cost prohibitive.

SEC's Proposal Will Significantly Undermine Issuer-Investor Engagement

Since 1978, when the SEC implemented the reporting requirement of section 13(f), a dramatic increase in engagement between institutional investors and the public companies with whom they invest has occurred. Investors are increasingly active in engaging with issuers on important governance, strategic, and business decisions. In response, companies are more engaged than ever in investor relations to ensure concerns are heard and conveyed to senior executives and directors. NMA's member companies value this engagement. The information provided in 13F allows our members to better understand and communicate with shareholders.

Yet, the SEC's proposal would blunt this engagement by severely limiting the ability of companies to regularly engage with and know their shareholder base. For example, companies rely heavily on the quarterly ownership information in 13F filings to prioritize which investors the C-suite executives or directors should meet with during the year. Companies use this information to analyze shareholder holdings, understand shareholder portfolios, and identify new investors. By raising the threshold for reporting, the SEC will greatly reduce this visibility into the shareholder base that is needed for critical outreach, communication, and education efforts. Eliminating the disclosure of over $2.3 trillion in assets would have serious ramifications for continued and effective issuer-investment engagement, especially by small and mid-cap companies that have a greater percentage of smaller investors who would evade disclosure.

For example, NOVAGOLD RESOURCES INC., an NMA member, recently filed comments on the SEC's proposal, providing on-the-ground impacts to their company.[2] According to NOVAGOLD, the SEC proposal "would allow 117 or 40.6 [percent] of their current 13F filers to avoid disclosure" and "would result in a significant loss of market transparency." As a small-to-mid cap company, NOVAGOLD is especially concerned about how the reduction of 13F transparency would impair their ability to identify their most active shareholders and hedge funds and engage effectively with them. The same can be said for many companies. According to an IHS Markit analysis of the potential impact on the Russell 3000, an average company would lose visibility into 55 percent of its current 13F filers and 69 percent of the hedge funds on its 13F list.[3] The SEC must preserve the ability to effectively conduct outreach and engagement with smaller investors by withdrawing this proposed rule.

SEC's Proposal Will Negatively Impact Capital Formation and Increase the Risk of Activism

NMA is concerned that the loss of data and decreased investor engagement will impede a company's ability to attract long-term institutional investors. Small and mid-cap companies rely heavily on 13F data to help them identify prospects and to measure the effectiveness of their outreach efforts. To effectively access the capital markets, companies need access to this data. If the SEC raises the threshold to $3.5 billion, companies will not know who is holding as well as buying their shares or the shares of similar companies and thus hinder their ability to continue to compete for and raise capital.

Additionally, the proposed changes will expose more U.S. public companies to hedge fund activism. According to IHS Market, 86 percent of activist investors would no longer have to make 13F filings.[4] This result directly contradicts recent calls by the SEC for greater transparency amidst the market uncertainty and volatility caused by the global COVID-19 pandemic. Many activist investors have taken advantage of share price declines to amass larger stakes in potential targets. Under the proposed reporting

---

2 *See* Gregory A. Lang, President & CEO Chair, NOVAGOLD RESOURCES INC. and Sharon Dowdall, Corporate Governance & Nominations Committee, NOVAGOLD Resources Inc., Letter to SEC (Sept. 2, 2020), *available at* https://www.sec.gov/comments/s7-08-20/s70820-7753767-223206.pdf.

3 IHS Markit, "SEC's 13F Proposal – Issuer and Investor Analysis" (Aug. 7, 2020), *available at* https://ihsmarkit.com/research-analysis/secs-13f-proposal--issuer-and-investor-analysis.html.

4 *See id. See also* Corporate Secretary, "Study Shows Extent of 13F Rule Change Proposal's Impact," (Aug. 13, 2020), *available at* https://www.corporatesecretary.com/articles/shareholders/32222/study-shows-extent-13f-rule-change-proposal%E2%80%99s-impact.

threshold, companies would no longer be able to monitor those activist investors. The loss of this information could potentially expose companies to a greater risk of ambush activism by short-term-oriented fund managers resulting in negative economic and financial consequences for companies and the communities in which they operate. Instead of eliminating the reporting of this important information, the SEC should be expanding reporting to include short positions.

Conclusion

The SEC's proposal contradicts its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. If finalized, the increase in the reporting threshold would seriously jeopardize the robust engagement by U.S. companies with their investors. The proposal will also negatively impact a company's ability to attract new long-term investors and detect potential activists with serious economic consequences. These negative impacts far outweigh the modest cost savings in paperwork burdens for investment managers.

Rather than eliminating the transparency the 13(f) program provides, NMA urges the SEC to withdraw the proposed rule and pursue other reforms that would promote more timely and complete disclosure through monthly reporting, require the public disclosure of short positions, and reduce the archaic 45-day reporting period. If you have any questions, please contact me at tbridgeford@nma.org or (202) 463-2629.

Tawny A. Bridgeford
Deputy General Counsel & Vice President, Regulatory Affairs