

September 29, 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 Number S7-08-20

Dear Ms. Countryman:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers who collectively lead companies with more than 15 million employees and \$7.5 trillion in revenues. Business Roundtable members invest nearly \$147 billion in research and development. In addition, our companies annually pay \$296 billion in dividends to shareholders and generate \$488 billion in revenues for small and medium-sized businesses.

We appreciate the opportunity to comment on the proposed rules issued by the Securities and Exchange Commission (the "Commission") on July 10, 2020, titled Reporting Threshold for Institutional Investment Managers, Release No. 34-89290; File No. S7-08-20 (the "Proposing Release"). Business Roundtable understands the Commission's desire to update the thresholds that require institutional investment managers to report their holdings on Form 13F. For the reasons identified below, however, Business Roundtable opposes the Commission's proposed amendments to increase the Form 13F reporting threshold from \$100 million to \$3.5 billion (the "Proposal") and urges the Commission to table this effort until, and as discussed below, there is an alternative source of information regarding the identities of shareholders of public companies to replace that which is currently available as a result of the existing Form 13F reporting requirements. Alternatively, we urge the Commission to take a more measured approach in changing the threshold.

### **THE IMPORTANCE OF FORM 13F INFORMATION FOR MARKET TRANSPARENCY AND SHAREHOLDER ENGAGEMENT**

The Proposal would drastically reduce information available to the public about the identity of the institutional holders of a public company's shares. This significant reduction in market transparency would hamper companies' efforts to engage with their shareholders and runs counter to the Commission's and Chair Clayton's efforts otherwise to increase transparency in the markets. In order to better understand shareholder needs and what behaviors shareholders prioritize, companies need to know who their shareholders are.

A successful shareholder engagement program requires companies to be able to identify their shareholders and proactively engage with them through direct outreach. Yet few sources of this information currently exist. As the Commission itself noted in the Proposing Release, “[t]he data [included in Form 13F] can also assist ... corporate issuers of 13(f) securities interested in determining the beneficial holders of their publicly traded stock.” In a shareholding system primarily comprised of “Objecting Beneficial Owners” (“OBOs”), there is already limited transparency today. Shareholders are not required to identify themselves as owners of a company’s shares unless they cross the 5% beneficial owner reporting threshold applicable under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (the “Exchange Act”). This is a very high hurdle and not a practical source of information for shareholder engagement. Our typical member company only has a small handful of shareholders that beneficially own more than 5% of the company’s outstanding stock. Consequently, our member companies and/or the third-party advisors on whom they rely for shareholder information utilize Form 13F filings to identify, and facilitate meaningful engagement with, a significant number of their shareholders. Such engagement may be particularly important for a company in sharing its rationale and approach to issues of core importance to shareholders.

We believe that amending the Form 13F threshold to \$3.5 billion would significantly impair shareholder engagement by triggering a substantial loss of market transparency. This loss of transparency would put small and medium sized institutional holders at a disadvantage from a company-engagement perspective. Form 13F filings serve as the single source of information regarding which “street name” investors are buying and selling stock each quarter, without which our members would not be able to identify a significant number of their shareholders, particularly smaller to medium sized institutional holders. For example, if companies are able to identify the positions of large asset managers and certain hedge funds, but not the positions of small to medium sized institutional holders, companies will, of necessity, dedicate a disproportionate amount of time to a limited subset of their shareholders. This subset would not include a potentially important universe of institutional holders for targeted engagement – firms with a more focused portfolio that, while holding only a relatively small number of investments may have sizeable positions in particular companies that would fall below the threshold given their total portfolio size. In this instance, the smaller institutional holder with higher relative exposure to a company may be precluded from gaining the same level of access to management that larger assets under management shareholders would have purely based on their disclosures – or lack thereof. We urge the Commission to fully consider the potential impacts of these consequences on investor relations efforts and corresponding shareholder engagement.

Finally, we believe the loss of Form 13F data would also impede our members’ ability to attract new capital from long-term institutional investors. Analyzing quarterly trends such as the buying and selling of securities as well as broader investment shifts across industries are important in identifying potential pools of capital that would be interested in investing in our members’ securities. Under the proposed threshold, the loss of visibility into those trends across the broader investment universe would hinder the ability of our member companies to compete for and raise growth capital. Further, shareholders that may be considering an

investment in a public company would be deprived of a source of data that may be relevant to their investment decision.

### **THE IMPORTANCE OF FORM 13F INFORMATION FOR MONITORING SHAREHOLDER ACTIVISM**

In addition to its importance to market transparency and shareholder engagement, companies also use Form 13F data to monitor and assess activist investors in advance of such investors triggering the disclosure requirements under Sections 13(d) and 13(g) of the Exchange Act. Under the Proposal, the loss of this data could impair a company's ability to detect a potential activist, delay its response and expose the company and its shareholders to heightened risk. Especially in times of high market volatility, companies need greater, not less, transparency in addressing potential activist investors that could take advantage of share price declines to amass larger stakes in potential target companies, to the potential detriment of long-term investors. Under the proposed \$3.5 billion threshold, companies would be unable to monitor those activist investors who would be exempt from reporting their positions, thus enabling activists to use the increased lack of transparency for their benefit and not that of long-term shareholders.

### **REQUEST TO TABLE PROPOSED CHANGES AND DEVELOP REFORM THAT ADDRESSES CONCERNS**

The Commission described the problems faced by public companies and others in identifying company shareholders in its 2010 Concept Release on the U.S. Proxy System ("Proxy Plumbing Concept Release").<sup>1</sup> In the Proxy Plumbing Concept Release, the Commission asked wide-ranging questions about how to approach these problems and received meaningful input through the comment process. For various reasons, the Commission has not yet had an opportunity to act on many of the important questions raised in the Proxy Plumbing Concept Release, including developing a solution to the shareholder identification problem.

Business Roundtable appreciates the Commission's goals in proposing to update and modernize the Section 13(f) reporting system and to save costs for smaller advisers through that effort. But we believe the costs associated with the loss in transparency and the related constraints on access to capital in an increasingly competitive market would be detrimental to the public capital markets and its investors, particularly without an alternative source of the important information provided through Form 13F.

Against this backdrop and for the reasons discussed above, Business Roundtable and its member companies urge the Commission to table the Proposal and move forward with this modernization effort in the future when the needs of all stakeholders in this important area can be addressed concurrently – for example through Commission action to address the current

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<sup>1</sup> Release Nos. 34-62495; IA-3052; IC-29340; File No. S7-14-10 (July 14, 2010).

inability of public companies to identify their shareholders, as discussed in the Proxy Plumbing Concept Release.

If the Commission determines that it will move forward with the Proposal without a solution to the shareholder identification problem, Business Roundtable believes that the Commission should take a more measured approach to the change in threshold. Rather than moving from a \$100 million threshold to \$3.5 billion – a dramatic increase of 35-fold – any change should be incremental to allow market participants and the Commission to assess the impact of this loss of transparency. A more measured approach would also be consistent with actions taken by the Commission when modifying thresholds in previous rule amendments, such as the Commission's adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,<sup>2</sup> the inflation-based increase in the gross revenue cap for emerging growth companies<sup>3</sup> and the adjustments to the thresholds for smaller reporting companies.<sup>4</sup>

## **CONCLUSION**

Business Roundtable appreciates the opportunity to share our views on the Proposal. We believe regulatory reform efforts around reporting of public company shareholders are of critical importance, and we look forward to sharing our views with the Commission as you move forward on these initiatives in the future.

Thank you for considering our comments and recommendations. We would be happy to discuss these comments or any other matters you believe would be helpful.

Sincerely,



Maria Ghazal  
Senior Vice President & Counsel  
Business Roundtable

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<sup>2</sup> Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 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).

<sup>4</sup> Smaller Reporting Company Definition, Release Nos. 33-10513; 34-83550; File No. S7-12-16 (June 28, 2018).