

September 28, 2020

Via Email

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. 34-82920; File No. S7-08-20**

Dear Ms. Countryman:

I write on behalf of Invitae Corporation (“Invitae” or the “Company”)¹ to provide feedback regarding the Securities and Exchange Commission’s (the “Commission”) proposed amendments to Rule 13f-1 of the Securities Exchange Act of 1934 (the “Exchange Act”), and corresponding proposed increase to the Form 13F reporting threshold from \$100 million to \$3.5 billion. As discussed below, we believe that the proposed amendments would substantially decrease market transparency, impose significant costs and other burdens on publicly traded companies, and reduce capital formation and strategic business combinations. We therefore respectfully request that the Commission decline to adopt the proposed amendments.

Invitae is a mid-cap company focused on advanced medical genetics and founded on the mission of making comprehensive genetic information part of mainstream medicine. We are currently focused on providing genetic testing for adult and pediatric inherited disease as well as reproductive health. The Company earned approximately \$217 million in revenue in 2019 and employs approximately 1,500 individuals worldwide.

The Proposed Amendments Would Decrease Transparency and Investor Engagement

As an overarching matter, Form 13F filings are the sole accurate source of information regarding the identity of institutional shareholders of U.S. issuers. Based on the most recently available data, we estimate that raising the Form 13F reporting threshold to \$3.5 billion would prevent Invitae from having any visibility into the identity of approximately 10 percent of our shareholders. We note that this percentage was even higher when we were a smaller cap company (as recently as last year), as small-cap issuers generally attract investors with fewer assets under management. While larger companies may have the ability to conduct extensive investor surveillance to compensate for this deficit (presumably at a considerable cost), small and mid-cap companies—such as Invitae—have no reasonable mechanism to obtain this critical data.

The loss of this data—and accompanying decrease in transparency regarding the identity of investors—will be detrimental to public companies. Indeed, public companies rely extensively on

¹ Invitae’s common stock is registered under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker symbol “NVTA.”

Form 13F data to guide a wide variety of interactions with investors. On a weekly basis, Invitae receives and responds to approximately ten purported shareholder inquiries. To properly address these inquiries, Invitae must be able to determine (among other things) whether a communication is actually from a shareholder and whether that shareholder is a long-term investor. Raising the Form 13F reporting threshold would diminish our ability to make these determinations, and thus frustrate Congress's primary purpose in enacting Section 13(f) of the Exchange Act, which was to increase the availability of information regarding ownership of securities by institutional investors.²

The Commission has recently—and repeatedly—emphasized the importance of market transparency.³ Invitae agrees with the Commission's expressly stated views on this subject, and suggests that the impact of increasing the Form 13F threshold should be considered in the context of other recent actions and proposals that may undermine the Commission's transparency related goals.⁴

Raising the Form 13F Threshold Would Impede Issuers' Compliance with Other Legal Requirements

In addition to decreasing our ability to effectively identify and engage with our shareholders, the proposed amendments would make it difficult for the Company—and other issuers—to comply with various regulatory and corporate requirements. By way of example, the process of obtaining the requisite shareholder approvals for certain transactions would become increasingly difficult and costly. As the Commission is aware, securities exchange rules, state corporate law, and the governing documents of many issuers require stockholder approval for a variety of transactions including issuances of securities and amending a certificate of incorporation or bylaws. Creating additional hurdles to companies identifying shareholders would hinder the ability of companies to effectuate these and other important transactions, many of which can be time sensitive. While companies can hire proxy solicitation firms to assist in obtaining the requisite shareholder approvals, it is both costly and time consuming to do so. These costs are likely to be particularly burdensome for small- and mid-cap issuers, including Invitae.

² See Section 13(f) Confidential Treatment Requests, Securities and Exchange Commission, Division of Investment Management (June 17, 1998) (“Congress enacted Section 13(f) to increase the public availability of information regarding the purchase, sale, and holdings of securities by institutional investors.”).

³ See, e.g., Chairman Jay Clayton, Governance and Transparency at the Commission and in Our Markets (Nov. 8, 2017), available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>; Chairman Jay Clayton, Modernizing our Regulatory Framework (Nov. 14, 2019), available at <https://www.sec.gov/news/speech/clayton-modernizing-our-regulatory-framework-111419>.

⁴ Commissioner Lee's Statement on the Proposal to Substantially Reduce 13F Reporting (July 10, 2010) at n.2 (citing examples).

The Proposed Rule Would Impede Capital Formation and Decrease Opportunities for U.S. Investors

Finally, the proposed amendments would impede capital formation—a vital component of the Commission’s three-part mission.⁵ Invitae—and many other issuers—rely extensively on Form 13F data to identify current shareholders from whom to raise additional capital when the need arises. Additionally, Invitae—and many other issuers—also utilize 13F data to identify new prospective investors (*i.e.*, those who have invested in similar companies). The proposed amendments would reduce the volume of information available in 13F disclosures and drastically undermine the data’s utility for identifying sources of potential capital. As a result, the process of raising funding would become longer, more expensive, and ultimately less certain. We are simply not aware of any other source of information upon which we can rely for the extensive shareholder information that will disappear if the proposed amendments are adopted.

Over the course of his tenure, Chairman Clayton has aspired to encourage additional companies to enter U.S. public markets.⁶ Because issuers have a strong interest in knowing the identity of their stockholders (for the reasons discussed above), the proposed amendments would likely deter private companies from going public or incentivize them to pursue capital through foreign public markets. The Commission has recently recognized the enhanced risk faced by U.S. investors when they invest in companies that are listed overseas.⁷

Although the Commission’s proposed rule discusses the potential economic impact on investment managers, it is silent regarding the benefits and costs with respect to public companies.⁸ We respectfully request that in light of the substantial costs that would be imposed on U.S. issuers—among the other considerations discussed in this comment letter—the Commission decline to adopt the proposed amendments.⁹

Additionally, Invitae supports the position outlined in the 2013 petition by the National Investor Relations Institute, the New York Stock Exchange, the NASDAQ, and the Society for Corporate

⁵ About the SEC, What we do, available at <https://www.sec.gov/Article/whatwedo.html>.

⁶ See, e.g., Testimony of Chairman Jay Clayton on Oversight of the Securities and Exchange Commission Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Dec. 10, 2019).

⁷ See International Investing, SEC Office of Investor Education and Advocacy (Dec. 8, 2016), available at <https://www.sec.gov/reportspubs/investor-publications/investorpubsininvesthtm.html>.

⁸ See generally, SEC Release No. 34-89290, Reporting Thresholds for Institutional Investment Managers, File No. S7-08-20.

⁹ Commissioner Lee’s Statement on the Proposal to Substantially Reduce 13F Reporting (July 10, 2010) at 1 (opining that the proposed amendments “lack[] a sufficient analysis of the costs and benefits” and noting “[t]he Commission’s legal obligation to do a thorough analysis under the National Securities Markets Improvement Act ...”).

Vanessa Countryman, Secretary

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Governance to improve transparency by decreasing the Rule 13F reporting deadline from 45 days to two business days following the conclusion of each quarter.¹⁰

We thank the Commission for considering our perspective on this important issue.

Sincerely,



Shelly D. Guyer
Chief Financial Officer
Invitae Corporation

¹⁰ See, e.g., Petition No. 4-659, Request for Rulemaking Concerning Amendment of Beneficial Ownership Reporting Rules Under Section 13(f) of the Exchange Act in Order to Shorten the Reporting Deadlines (Feb. 4, 2013), available at <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>.