



September 29, 2020

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20548-1090

**Re: Reporting Threshold for Institutional Investment Managers, Release No. 34-89290; SEC File Number S7-08-20**

Dear Ms. Countryman:

The Society for Corporate Governance (the “Society” or “we”) appreciates the opportunity to provide comments to the U.S. Securities and Exchange Commission (the “SEC” or the “Commission”) on the proposed changes to the reporting threshold for Form 13F reports by institutional investment managers (the “Proposed Rules”). We respectfully submit this letter in opposition to the Proposed Rules.

Founded in 1946, the Society is a professional membership association of more than 3,500 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry. Society members are responsible for supporting the work of corporate boards of directors and the executive managements of their companies on corporate governance and disclosure matters.

**I. Introduction**

Congress enacted Section 13(f) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to increase the public availability of information regarding the securities ownership of institutional investors and to increase investor confidence in U.S. securities markets.<sup>1</sup> When the final rules relating to the filing and reporting requirements of institutional investment managers were announced in 1979, the SEC made clear that “[t]he reporting system required by Section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, in order to improve the body of factual data available and to facilitate the consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of

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<sup>1</sup> See U.S. Securities and Exchange Commission, Office of Inspector General, Office of Audits, *Review of the SEC’s Section 13(f) Reporting Requirements*, Report No. 480 (September 27, 2010) (the “OIG Review”), at iv.

that influence.”<sup>2</sup> Accordingly, as the SEC has recognized, the goals of the Section 13(f) disclosure program are to (i) aggregate data in respect of the investment activities of institutional investment managers, (ii) improve public insight into the holdings of institutional investment managers in order to facilitate the assessment of such managers’ impact on the securities markets, and (iii) increase investor confidence in the integrity of the U.S. securities markets.<sup>3</sup>

In significant part because of public companies’ limited visibility to their shareholders’ identities, Form 13F filings today make up the primary data input for their “shareholder lists.” These disclosures are a primary source for market participants to understand the ownership profile of an issuer’s securities and, in the view of the Society’s membership, are essential to the functioning, growth, and clarity of the U.S. securities markets.

The Proposed Rules would undermine the express purposes of Section 13(f), run contrary to the Commission’s stated objectives with respect to regulating the securities markets, and harm investors, issuers, regulators, and academics alike. In particular, the Proposed Rules would substantially reduce market visibility into public company holdings—a burden that will be borne by issuers of all sizes<sup>4</sup> and that would have the perverse effect of privileging the voices and influence of the already large, growing, and further concentrating index funds and larger asset managers at the expense of smaller institutional investors.<sup>5</sup> In addition, the Proposed Rule’s massive reduction in 13F data will—in the context of the significant increase in investor activism since Section 13(f)’s enactment—dramatically reduce confidence in the integrity of U.S. markets. Accordingly, we respectfully submit this letter in opposition to the Proposed Rules.

Nonetheless, we support the Commission’s goals of modernizing the information reported on Form 13F and increasing the information provided by institutional investment managers. To that end, in connection with a broader overhaul of the shareholder reporting framework, we would be supportive of an increase to the Section 13(f) reporting threshold from \$100 million to \$450 million to reflect a consumer price inflation adjustment from 1976 to 2019, as previously considered by the Commission and proposed by another commentator.<sup>6</sup> However, the Society believes the SEC should only revise the current 13F reporting threshold as part of a comprehensive

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<sup>2</sup> See Filing and Reporting Requirements Relating to Institutional Investment Managers, Release No. 15461 (January 5, 1979).

<sup>3</sup> OIG Review at iv.

<sup>4</sup> As noted in Section II, under the Proposed Rules, issuers with \$0-250 million market capitalization would lose visibility into approximately 38.9% of their shareholder base (while losing visibility into approximately 27.9% of their filers), while issuers with a market capitalization of \$10 billion or greater would lose visibility into approximately 7.4% of their shareholder base (while losing visibility into approximately 55.4% of their filers).

<sup>5</sup> See Julie Segal, *The Asset Management Industry Is Getting More Concentrated*, Institutional Investor (October 29, 2018), available at <https://www.institutionalinvestor.com/article/b1bk8n82qcc0kt/The-Asset-Management-Industry-Is-Getting-More-Concentrated>; see also Willis Towers Watson, *The world’s largest 500 asset managers – Thinking Ahead Institute and Pensions & Investments joint research* (2018), available at [https://willistowerswatson.pl/aktualnosci/pdf/2018.10.29-TAI-PI-500\\_2018.pdf](https://willistowerswatson.pl/aktualnosci/pdf/2018.10.29-TAI-PI-500_2018.pdf).

<sup>6</sup> See Reporting Threshold for Institutional Asset Managers, Exchange Act Release No. 34-89290 (July 10, 2020), available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf> (“Proposed Rules Release”), at 13, n. 31.

modernization of shareholder reporting. As part of such a comprehensive modernization exercise, the Society reiterates its belief that it would be appropriate for the SEC to shorten the quarterly reporting deadline for 13F filings to two business days after the end of the calendar quarter.<sup>7</sup>

This letter proceeds as follows. Section II outlines how the Proposed Rules would significantly reduce market transparency, materially reduce shareholder engagement, hamper capital formation, increase the costs of shareholder activism, and conflict with the policy rationale underlying Section 13(f). Section III provides a cost-benefit analysis, demonstrating that any potential cost savings as a result of the Proposed Rules is more than outweighed by the substantial costs resulting from the decline in market transparency. Section IV outlines the Society's alternative to the modernization of Form 13F reporting regime, proposing to increase the existing threshold to \$450 million and reducing the reporting period to two business days, as part of a comprehensive modernization of Section 13 shareholder reporting.

## **II. Loss of Transparency**

In 1971, the SEC released the Institutional Investor Study Report that was commissioned by Congress three years prior (the "Institutional Investor Report").<sup>8</sup> There, the Commission recognized that "[t]he importance of a regularized, uniform and comprehensive, scheme of institutional reporting cannot be minimized in light of the demonstrated growth of institutional investment and its impacts on the structure of securities markets, corporate issuers and individual investors."<sup>9</sup> Accordingly, the SEC concluded in the Institutional Investor Report that "gaps in information about the purchase, sale and holdings of securities by major classes of institutional investors should be eliminated" and recommended that the Commission be granted the "general authority to require reports and disclosures of such holdings and transactions from all types of institutional investors."<sup>10</sup>

As currently contemplated, the Proposed Rules would eliminate access to information about discretionary accounts managed by more than 4,500 institutional investment managers,

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<sup>7</sup> See NYSE Euronext, Society of Corporate Secretaries and Governance Professionals, and National Investor Relations Institute, Letter to Ms. Elizabeth M. Murphy, *Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934* (February 1, 2013).

<sup>8</sup> See Institutional Investor Study Report, H.R. Doc. No. 92-64 (1971).

<sup>9</sup> See Institutional Investor Study Report, H.R. Doc. No. 92-64, at X (1971).

<sup>10</sup> See Institutional Investor Study Report, H.R. Doc. No. 92-64, at X (1971).

representing approximately \$2.3 trillion in assets.<sup>11</sup> This means that nearly 90% of institutional investment managers would be relieved from reporting on Form 13F.

In other words, increasing the reporting threshold to \$3.5 billion and eliminating the Form 13F filing requirement for nearly 90% of filers<sup>12</sup> widens—not closes—the very same gaps that the SEC was concerned with in the 1970s. Accordingly, the Society expects that the Proposed Rules would materially reduce the ability of issuers to satisfy investors’ increasing demand for engagement and would complicate the ability of all issuers (but particularly smaller issuers) to access working capital. Implementation of the Proposed Rules would also eliminate disclosure by the vast majority of activist investors of positions below 5%, potentially resulting in an increase in stealth shareholder activist activity and value destruction for both issuers and activist investors.

#### *A. Market Change Has Reduced Transparency Under Existing 13F Regime*

In 1978, when Form 13F was adopted, the distribution of market capitalizations among public companies was more uniform than it is today. In the current market, valuations are markedly more concentrated, with the top five publicly traded U.S. companies constituting approximately 23.1% of the S&P 500.<sup>13</sup> The shareholder bases of larger issuers are also typically dominated by larger investors that accumulate sizable positions in such issuers. In 2020, the “big three” index funds, BlackRock, Vanguard, and State Street, controlled approximately 20% of the S&P 500,<sup>14</sup> representing a radical departure from the historically dispersed ownership of the U.S. stock market.<sup>15</sup>

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<sup>11</sup> 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>.

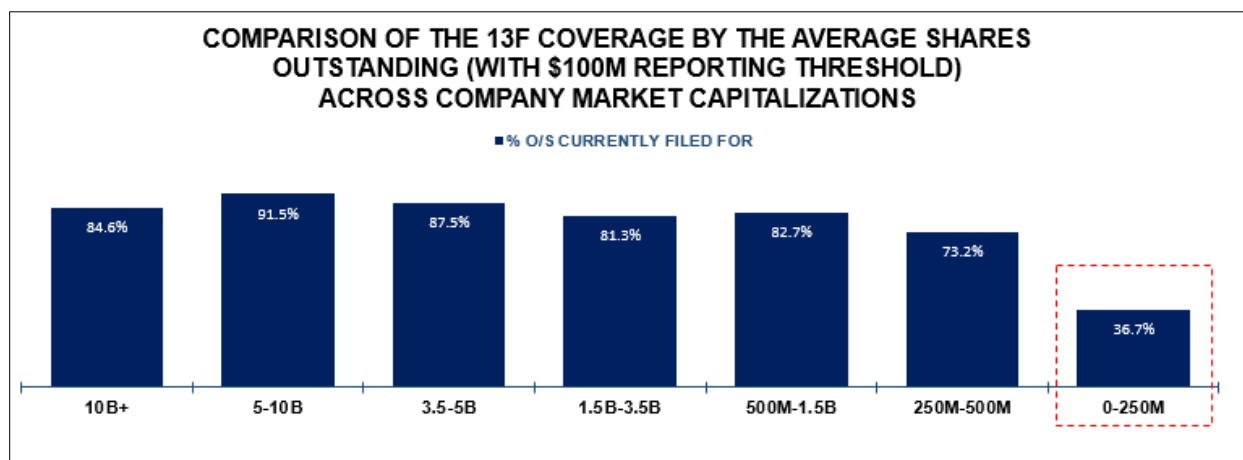
<sup>12</sup> See Press Release, U.S. Securities and Exchange Commission, *SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today’s Equities Markets* (July 10, 2020), available at <https://www.sec.gov/news/press-release/2020-152>.

<sup>13</sup> These companies are: Apple Inc. (~6.5%), Amazon.com, Inc. (~5.3%), Microsoft Corporation (~5.2%), Alphabet Inc. (~3.5%) and Facebook, Inc. (~2.6%), as of September 12, 2020.

<sup>14</sup> See Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721, 724 (2019).

<sup>15</sup> See Caleb N. Griffin, *We Three Kings: Disintermediating Voting at the Index Fund Giants*, 79 MD. L. REV. 954, 960 (2020), available at <https://digitalcommons.law.umaryland.edu/mlr/vol79/iss4/3>.

As demonstrated in **Table 1** below,<sup>16</sup> market changes over the past 42 years have led to an outdated disclosure regime under Section 13(f). For example, smaller issuers with market capitalizations of up to \$250 million have relatively poor visibility into their shareholder base under the existing 13(f) regime: only 36.7% of their shares outstanding (on average)<sup>17</sup> are reported on Form 13F. On the other hand, mid-and large-capitalization issuers have greater visibility today: over 80% of their shares outstanding (on average) are reported on Form 13F.



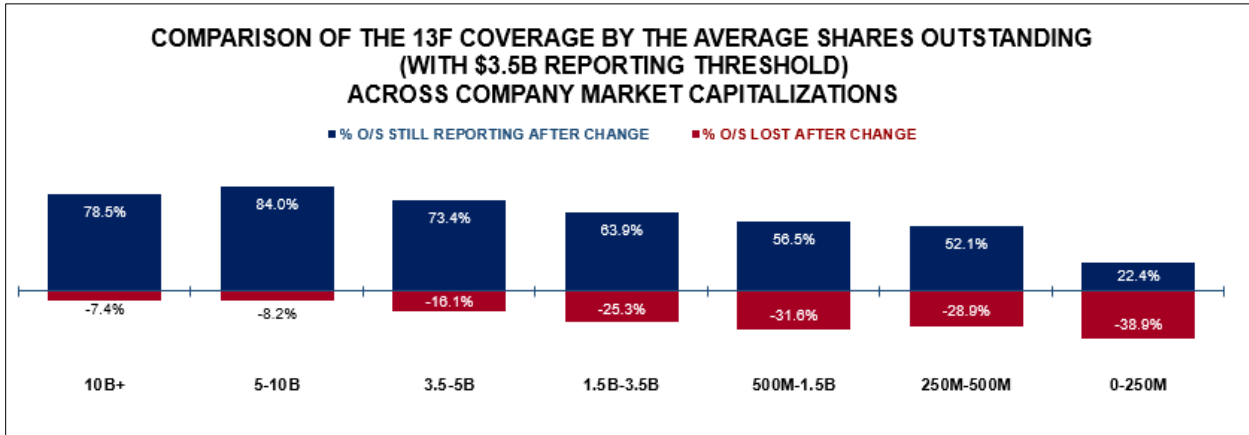
**Table 1** (Source: Innisfree M&A Incorporated, as of August 18, 2020)

### B. Impact of the Proposed Rules

Under the Proposed Rules, the gap in visibility into the shareholder bases of large- versus small-capitalization issuers is likely to widen substantially. As demonstrated in **Table 2** below, issuers with market capitalizations below \$250 million would lose visibility into approximately 38.9% of their shares outstanding (on average), while issuers with market capitalizations of \$10 billion or greater would lose visibility into approximately 7.4% of their shares outstanding (on average). The Society is also aware of members representing larger issuers who expect substantially greater reductions in transparency with respect to their shares outstanding than the average reported in the Survey.

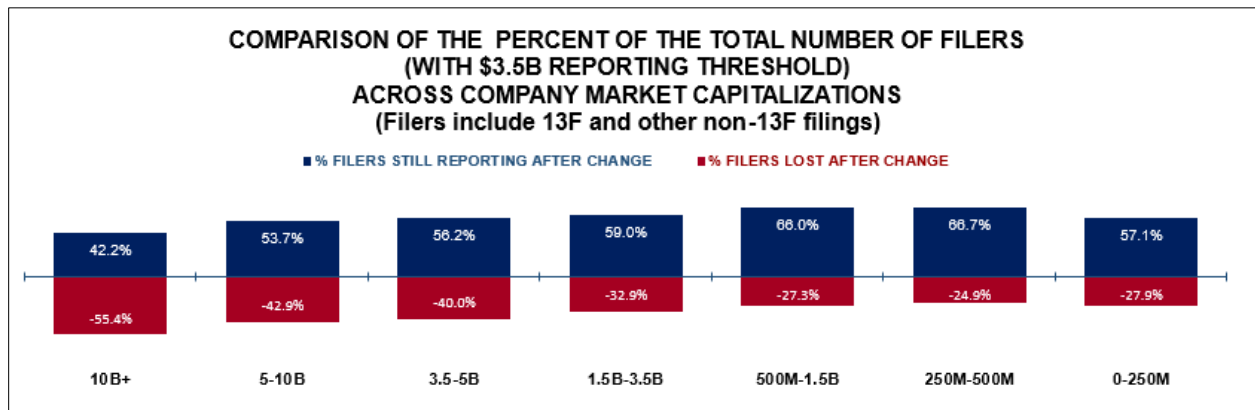
<sup>16</sup> For data presented, or otherwise referred to, in the letter in Tables 1 through 4 and 6 through 7, please see [Exhibit A](#) for Innisfree’s methodology.

<sup>17</sup> In this letter, “on average” means that with respect to each of the seven ranges of market capitalizations described in Tables 1 through 4 and 6 through 7, the median 30 stocks were taken as a sample group.



*Table 2 (Source: Innisfree M&A Incorporated, as of August 18, 2020)*

The Proposed Rules would also have a differential effect on issuers by market capitalization with respect to each issuer’s visibility in the number of filers of Form 13Fs holding its stock. As demonstrated in **Table 3** below, issuers with market capitalizations of \$10 billion or greater would lose visibility into approximately 55.4% of their filers (on average), while issuers with market capitalizations below \$250 million would lose visibility into approximately 27.9% of their filers (on average). In other words, although smaller issuers would lose visibility into substantially more *shares* than larger issuers under the Proposed Rules, the larger issuers are expected to lose visibility into substantially more *filers* than smaller issuers. The Society expects the impact of these changes to significantly affect the ability of issuers across all market capitalizations to identify and engage with their shareholders. Even if those smaller investors who will no longer be visible to issuers only hold a small percentage of an issuer’s shares outstanding, such investors may still have a significant influence on issuers (e.g., hedge funds and activists). Moreover, the net effect of privileging the voices of larger investors over smaller investors is antithetical to the Commission’s mission and to the preferences of issuer and the investment community.



*Table 3 (Source: Innisfree M&A Incorporated, as of August 18, 2020)*

As discussed in Section IV, the Society believes that increasing the existing threshold to \$450 million would have a less harmful effect on issuers across all market capitalizations, while

still advancing the Commission’s goals of modernizing the information reported on Form 13F and increasing the information provided by institutional investment managers.

### *C. Impact of the Proposed Rules on Shareholder Engagement*

As Chairman Clayton has noted, “[s]hareholder engagement is a hallmark of our public capital markets”<sup>18</sup> and one of the “key principles” of our securities laws.<sup>19</sup> Further to such suggestions, the Commission has, in recent years, taken steps to enhance shareholder engagement in the corporate governance of public companies and attempted to modernize SEC rules around such engagement.<sup>20</sup> The Society fears that the Proposed Rules would lead to a stark regression in shareholder engagement.

Since the adoption of Section 13(f) more than 40 years ago, there has been a meaningful increase in shareholder engagement by issuers, including engagement with respect to long-term strategy, M&A, environmental, social, corporate governance and other matters, establishing a foundation for communications with shareholders and increasing shareholder confidence.<sup>21</sup> To that end, issuers commonly hire and retain investor relations professionals to ensure that the concerns of investors are heard, conveyed to management, and acted on.<sup>22</sup>

According to a survey of 157 issuers conducted by the Society in September 2020 (the “Survey”),<sup>23</sup> approximately 94% of the respondents stated they use Form 13F to identify institutional ownership, approximately 89% of the respondents stated they use Form 13F to monitor accumulations of holdings, and approximately 68% of the respondents stated they use

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<sup>18</sup> Chairman Jay Clayton, *Statement Announcing SEC Staff Roundtable on the Proxy Process* (July 30, 2018), available at <https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process>

<sup>19</sup> Chairman Jay Clayton, *Statement at Open Meeting on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System* (Nov. 5, 2019), available at <https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting> (“Today’s proposals are both rooted in key principles of our securities law. First, materiality. The proposals are designed to ensure investors receive the material information that would be expected to affect their investment decisions (including voting decisions). Second, facilitating constructive, information-rich engagement among shareholders and issuers in a manner that benefits all shareholders and our public capital markets more generally.”)

<sup>20</sup> See, e.g., U.S. Securities and Exchange Commission, “What We Are Doing to Enhance Shareholder Engagement,” available at <https://www.sec.gov/what-we-are-doing-improve-shareholder-engagement>.

<sup>21</sup> Recently, issuers addressed investors’ concerns about COVID-19’s impact on their business and industry, including the pandemic’s effect on revenue generation, profitability, and overall financial health.

<sup>22</sup> See Joint Comment Letter, National Investor Relations Institute, *Reporting Threshold for Institutional Investment Managers*, Release No. 34-89290; File No. S7-08-20, available at [https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI\\_13F\\_Joint\\_Issuer\\_Letter\\_SEC\\_2.docx](https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI_13F_Joint_Issuer_Letter_SEC_2.docx) (“NIRI Letter”)

<sup>23</sup> The Survey conducted by the Society reflects responses from 157 issuers, of which 75 (~48%) are issuers with market capitalization of \$10 billion or more, 50 issuers (~32%) are issuers with market capitalization between \$2-\$10 billion, 25 (~16%) are issuers with market capitalization between \$300 million and \$2 billion, and 7 (~4%) are issuers with market capitalization of less than \$300 million. The Survey is attached as Exhibit B.

Form 13F to identify, prepare and respond to activist attacks. In response to the Survey's question regarding how the issuer monitors investor movements in the issuer's stock, approximately 14% of the respondents stated they use Form 13F reports, approximately 10% of the respondents stated that they use either a stock surveillance program or a stock watch firm (who in turn use Form 13F reports), and approximately 75% of the respondents stated they use a combination of Form 13F reports and stock watch. In the absence of comprehensive Form 13F data, the members of the Society fear that they would be left without an adequate source to track their shareholders, especially if they may not be able to afford costly stock surveillance programs to assist in the verification of investor ownership. Even if they could afford stock surveillance programs, or are currently using such programs, all stock surveillance programs rely on the disclosures provided on Form 13F to form the initial basis of their analysis. Accordingly, the Proposed Rules would render stock surveillance services substantially less effective. Further, the inability of issuers to identify their investors by relying on the quarterly ownership information set forth in Form 13F filings is particularly problematic in light of misrepresentation by investors of their positions in issuers.<sup>24</sup> According to the Survey, approximately 15% of the respondents stated they have experienced misrepresentation by investors of their holdings while seeking engagement with issuers' management or board of directors.

As general counsel, corporate secretaries, and other governance professionals, the Society's members are frequently tasked with managing their company's shareholder meeting processes, including facilitating the exercise of shareholder voting rights, and spearheading shareholder engagement efforts. According to the Survey, approximately 86% of the respondents stated that they are using Form 13F reports in formulating their shareholder engagement strategy and meetings, and virtually all (98%) of the respondents stated that the Proposed Rules do not facilitate shareholder engagement. Moreover, given the loss of visibility into the shareholder bases of issuers across all market capitalizations, compliance, monitoring and shareholder engagement costs are likely to increase substantially.<sup>25</sup>

The Proposed Rules would make effective and efficient interactions between issuers and investors much more difficult. As detailed above, increasing the reporting threshold for institutional investment managers from \$100 million to \$3.5 billion would reduce issuers' insight into their investor base, making it more difficult to discern the appropriate amount of time and resources necessary for direct engagement with shareholders that have requested to speak with management and/or board of directors. According to the Survey, approximately 67% of the respondents stated that they believe the Proposed Rules would result in a decrease in engagement with investors with less than \$3.5 billion assets under management. Additionally, such limited insight would potentially make it more difficult for issuers' boards of directors to ascertain to whom (and to what type of investors) they owe their fiduciary duties. Further, another likely result of the reduced insight is that large institutional investors (*i.e.*, those that will continue to provide

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<sup>24</sup> See NIRI Letter. ("Unfortunately, companies cannot simply accept investors' representations at face value. In a 2016 survey of NIRI members, 45 percent said they definitely had experiences with investors who misrepresented their positions to obtain meetings with C-suite executives, while another 31 percent said they suspected that had happened").

<sup>25</sup> According to the Survey, approximately 67 percent of the respondents stated they anticipate incurring costs (financial or otherwise) as a result of loss of visibility into their shareholder base.



Form 13F disclosure) will be further prioritized and therefore exert even greater influence over issuers at the expense of smaller investors, a result both contrary to the Commission’s efforts to improve participation in corporate processes by smaller investors<sup>26</sup> and detrimental to the securities markets as a whole.<sup>27</sup>

#### *D. Negative Impact on Capital Formation*

As issuers and academics have noted, the Proposed Rules’ attempt at preventing front running and copycatting comes at the cost of significant “market opacity,” which, in turn, results in a reduction in capital formation.<sup>28</sup> On the one hand, Form 13F data is essential to the ability of issuers to identify potential investors and attract new long-term investments necessary for growth. The opaqueness of an issuer’s investor base will likely cloud fundraising activities, as certain issuers will suffer from an inability to pinpoint new capital sources (*e.g.*, investors that have made investments in the issuer’s industry) and monitor the efficacy of certain interactions with prospective shareholders. This is especially true for newly public issuers who may regularly access the securities market. Such issuers rely on information from Form 13F to monitor their shareholder base and engage with potential investors on an ongoing basis. This engagement is critical, as equity offerings are typically conducted with only one or two days of public marketing. With the adoption of Rule 163B, which allows “testing-the-waters” for all issuers, the SEC has validated the need for such engagement. On the other hand, the visibility provided by Form 13F disclosures encourages investments from smaller investors (*i.e.*, through the assessment of crowdedness of

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<sup>26</sup> See Chairman Jay Clayton, *Remarks at the PLI 49th Annual Institute on Securities Regulation* (Nov. 8, 2017), available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08> (“I have become increasingly concerned that the voices of long-term retail investors may be underrepresented or selectively represented in corporate governance. For instance, the SEC staff estimates that over 66% of the Russell 1000 companies are owned by Main Street investors, either directly or indirectly through mutual funds, pension or other employer-sponsored funds, or accounts with investment advisers. And, if foreign ownership is excluded, that percentage approaches approximately 79%. Yet it is not clear whether in our rulemaking processes the views and fundamental interests of long-term retail investors are being advocated fully and clearly, either by individual investors or groups that represent them.”); U.S. Securities and Exchange Commission, “What We Are Doing to Enhance Shareholder Engagement,” available at <https://www.sec.gov/what-we-are-doing-improve-shareholder-engagement>.

<sup>27</sup> The SEC has indicated that the Proposed Rules flow, in part, from its view that “the relative significance of managing \$100 million in securities as compared with the overall size of the U.S. equities market has declined considerably.” Reporting Threshold for Institutional Asset Managers, Exchange Act Release No. 34-89290 (July 10, 2020), available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf> (“Proposed Rules Release”). While the relative significance of managing \$100 million in securities may have declined from a financial perspective, the relative significance of managing \$100 million in securities has increased from a corporate governance and shareholder engagement perspective. Indeed, smaller managers play a critical economic role in the securities markets, driving price discovery in a manner that their larger counterparts typically do not. See The Vanguard Group, Inc., *A drop in the bucket: Indexing’s share of U.S. trading activity*, at 7, available at <https://advisors.vanguard.com/iwe/pdf/ISGINDX.pdf> (2019) (estimating that indexing represents less than 5% of overall U.S. trading volume).

<sup>28</sup> See, *e.g.*, Prof. Dan Bernhardt and Dr. Guillem Ordonez-Calafi, Letter to Vanessa A. Countryman (August 6, 2020); Heather Kos, Univar Solutions, Letter to Vanessa A. Countryman (August 7, 2020).

trades).<sup>29</sup> The Proposed Rules, and the attendant loss of visibility, introduce uncertainty for investors, potentially yielding fewer investments that facilitate capital formation and growth for issuers and making the securities offering process disproportionately burdensome for all issuers.

#### *E. Promotion of Activist Activity*

Increasing the ownership threshold from \$100 million to \$3.5 billion would result in many of the most influential activist hedge funds no longer filing Form 13F reports altogether.<sup>30</sup> In the wake of the Proposed Rules, out of a total of 123 activist hedge funds that are currently required to file, only 25 (20%) would continue reporting on Form 13F.<sup>31</sup> That is, other than the largest activists (e.g., Carl Icahn, Elliott Management, and Third Point), even prolific and vocal activists, such as Starboard Value, JANA Partners, Greenlight Capital, Engaged Capital, Land and Buildings, and Marcato, would generally not be required to disclose their sub-5% positions on a quarterly basis on Form 13F.

Eliminating Form 13F disclosure for most activist investors will affect issuers across all market capitalizations but will have an especially significant impact on smaller issuers, which are already more vulnerable to activism and hostile takeover activity than their larger peers.<sup>32</sup> As shown in **Table 4** below, under the current \$100 million reporting threshold, activists hold a combined value of \$64.2 billion worth of stock in small-capitalization issuers. As a result of the Proposed Rules, activists will continue reporting only \$32.6 billion worth of stock in small-capitalization issuers. In other words, roughly 50% of activist equity holdings (\$31.6 billion worth of stock) in smaller issuers would “go dark”.

To compare, as a result of the Proposed Rules, mid-and large-capitalizations issuers would lose visibility of 28% and 12%, respectively, of activists’ positions.

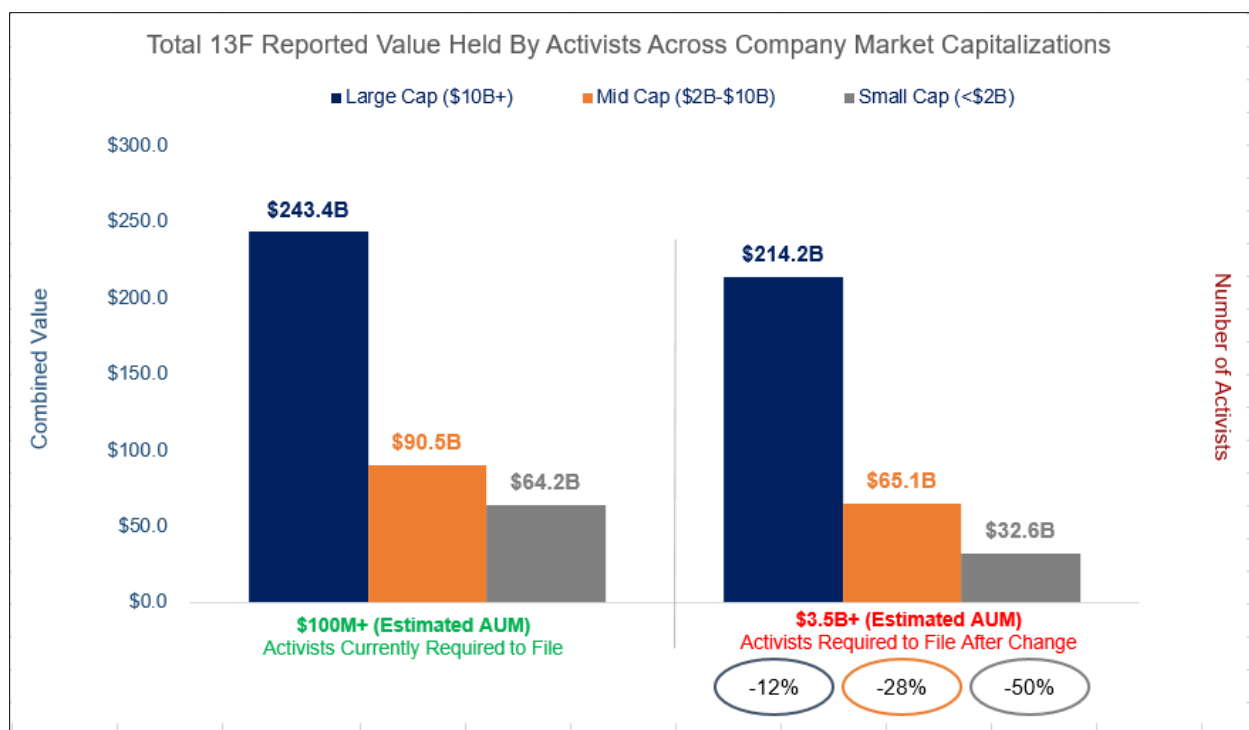
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<sup>29</sup> See Joanna Ossinger, *Goldman Warns SEC Proposal Could Shroud Hedge-Fund Crowding*, Bloomberg (July 20, 2020) (““The primary drawback of fewer hedge fund filings is lack of clarity around crowding risk,” strategists led by David Kostin said in a note July 17. “Reported hedge fund holdings allow investors to understand crowding risk, and to appropriately hedge portfolios.””)

<sup>30</sup> See Eduardo Gallardo, *Why the SEC’s Proposal to Amend Rule 13f-1 Should Fail*, The CLS Blue Sky Blog (July 27, 2020), available at <https://clsbluesky.law.columbia.edu/2020/07/27/why-the-secs-proposal-to-amend-rule-13f-1-should-fail/>.

<sup>31</sup> Based on data extracted from S&P Capital IQ, as of August 21, 2020. See Exhibit A for Innisfree’s methodology.

<sup>32</sup> See Table 5, showing proxy fights against U.S. issuers (across market capitalizations) in 2016 through 2020 (YTD). As demonstrated in Table 5, ~85 percent of the proxy fights launched between 2016 and 2020 (YTD), were against small-capitalization issuers.



**Table 4** (Source: Innisfree M&A Incorporated, as of August 30, 2020)

As a result of reduced disclosure by activist investors, issuers will no longer have key existing tools to identify, monitor, and prepare themselves for activist campaigns that frequently seek to influence the management, control, and boards of directors of issuers. In recent years, shareholder activists have become more numerous and diverse than they were in the past, both in their agendas and their methods. While in the 1980s corporate control and takeovers were activists' primary goals, today's shareholder activism is more focused on attempting to manufacture short-term value without a change in control, and doing so by leveraging a small ownership percentage, often no more than three to five percent. These changes in activism trends have led issuers' boards of directors, together with management, to engage with shareholder activists proactively.<sup>33</sup> The Proposed Rules will inhibit the ability of issuers, particularly smaller issuers, to effectively prepare for, identify, and respond to activist attacks, potentially facilitating the short-term investment objectives of a small subset of investors at the expense of the broader shareholder base.

Additionally, the inability to identify activist investors is likely to increase the cost of shareholder activism activity for both issuers and investors while simultaneously reducing trust and transparency between them. Activists and issuers frequently reach settlements on the basis of an implicit understanding of how shareholders are likely to vote on a given issue, thereby negating the necessity of prolonged and expensive shareholder solicitation processes. **Table 5** below shows the total number of proxy fights against U.S. issuers (across market capitalizations) between the years 2016 and 2020 (YTD) and the percentage of reported settlements reached in each of these

<sup>33</sup> See Chris Ruggeri, Deloitte Transactions and Business Analytics LLP, *Investor Engagement and Activist Shareholder Strategies*, Harvard Law School Forum on Corporate Governance (February 19, 2019), available at <https://corpgov.law.harvard.edu/2019/02/19/investor-engagement-and-activist-shareholder-strategies/>.

years out of the total number of proxy fights. On average, the percentage of settlements across all issuer market capitalizations was approximately 32 percent between the years 2016 and 2020 (YTD), with a higher percentage of settlements occurring at small- and mid-capitalization issuers. The Proposed Rules would make settlements and other informal, non-public discussions (such as “quiet” campaigns where an activist engages with the issuer behind the scenes) with activists significantly more challenging because it would be more difficult to gauge investor sentiment, predict shareholder voting outcomes, and quantify the value of preempting proxy contests.

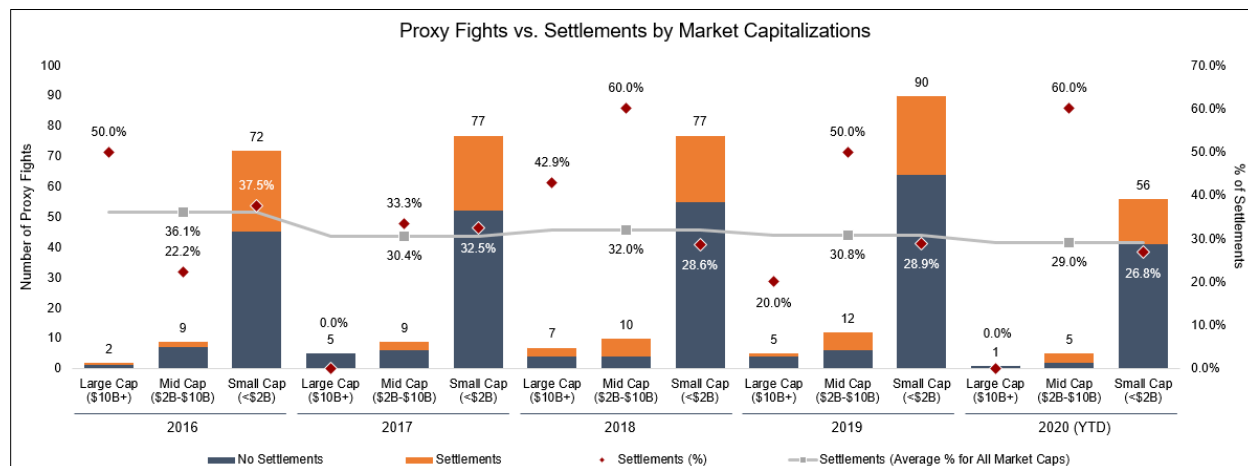


Table 5 (Source: FactSet, as of September 13, 2020)

### III. The SEC’s Cost Benefit Analysis is Incomplete and Warrants Reconsideration

#### A. *Purported Savings Do Not Justify The Reduction In Transparency*

We believe that the Commission’s economic analysis related to these proposed amendments requires further study by the Commission of the cost and benefit impacts on market participants, including public company issuers represented by the Society. Particularly, while we believe there are opportunities to improve the timeliness and transparency of this data, further economic analysis by the Commission of the substantial costs of the lost transparency of 13F data on public company issuers is needed<sup>34</sup>, as the 13F filings remain the only publicly-available source for public companies for quarterly data on the “street name” investors who are buying or selling their shares.

As mentioned above, the Society’s members heavily rely on 13F data to make determinations regarding capital formation activities and shareholder engagement strategies, including increasing their understanding as to whether shareholders are invested in them for the long-term. While the Commission’s economic analysis stresses the availability of other data sources, such as the Schedules 13D and 13G, and the Form N-PORT, these reports are not adequate substitutes, as Schedules 13D and 13G only become applicable if a person acquires beneficial ownership of 5 percent or more of an issuer’s outstanding shares. Likewise, Form N-PORT data

<sup>34</sup> See Commissioner Allison Herren Lee, “Statement on the Proposal to Substantially Reduce 13F Reporting” (July 10, 2020)(noting the limitations on the cost and benefit analysis on lost transparency as well as the limitations of assessing the reduced burdens to investment managers).

is only publicly available on a delayed basis and is limited to registered management investment companies, which are more likely to be the largest firms, which would continue to be identified through 13F filings and Schedules 13D and 13G.

Therefore, without the 13F reports, Society members would be limited in tracking ownership changes or verifying how much of their respective stock is owned by investors who may refuse to disclose their stakes – even after those investor reach out to issuers, request meetings with issuer management, or launch activist campaigns against issuers. However, the Commission’s proposal does not provide a more specific analysis of the value of this lost transparency.

Without access to 13F data, the Society’s members, as discussed above, would need to further rely on stock surveillance firms for capital formation activities and shareholder engagement. In 2016, Bloomberg estimated the annual cost of stock surveillance was \$25,000 to \$50,000<sup>35</sup> and in the experience of the Society’s members these annual costs are currently far higher and potentially prohibitive for smaller issuers.<sup>36</sup> With the competitive force of freely available 13F data removed, stock surveillance firms would likely be able to charge more for their services (even as the services would become less effective due to the absence of this 13F data) and become more cost prohibitive for smaller issuers.

In addition, the Society believes further study by the Commission is required on the cost consequences to issuers and shareholders on capital formation activities and reduced and less effective shareholder engagement. As discussed above, less engagement would ultimately lead to more proxy contests and less effective engagement processes with respect to activists’ campaigns and shareholders generally. Activist campaigns are costly for management, both in direct expenses and in the significant time and attention diverted from running the business. The Society believes ongoing shareholder engagement and bringing activists shareholders and issuers together to the negotiating table sooner allows public company issuers to achieve better outcomes for shareholders overall, including through negotiated settlements and costs avoided.<sup>37</sup> The data provided by 13F filings is a key tool for issuers to continue positive engagement strategies that allow them the opportunity to proactively avoid these costs and achieve negotiated outcomes that benefit its shareholders at large.

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<sup>35</sup> “Do IROs Need Shareholder Surveillance Services?” Bloomberg Professional (August 15, 2015) <https://www.bloomberg.com/professional/blog/do-iros-need-shareholder-surveillance-services>.

<sup>36</sup> See National Investor Relations Institute, The Case for 13F Reform at 1 (Sept. 25, 2019), <https://www.niri.org/NIRI/media/NIRI/Advocacy/NIRI-Case-for-13F-Reform-2019-final.pdf>.

<sup>37</sup> Cyriac, Joseph; De Backer, Ruth. “Preparing for bigger, bolder shareholder activists” (McKinsey & Company 2014) (finding collaborative, negotiated, or settled response to activist initiatives tends to lead to higher excess shareholder returns than a combative ones); See also Ide, Michael. “Proxy Fights Cost Companies \$4.8 Million on Average” (September 2014).

The expenses of responding to activists' campaigns are substantial to the Society members and ultimately are passed through to shareholders. A 2014 study found that a contested activist campaign costs a company between \$10 million and \$20 million – plus weeks of management time to develop plans and meet with investors.<sup>38</sup> Furthermore, Society members are more frequently being asked for reimbursements of expenses from activists' campaigns with U.S. public company issuers spending an average \$431,831 to cover activists' campaigning costs in 2018.<sup>39</sup> Without 13F data, the Society would expect that these costs would grow significantly as public company issuers would have less information to create proactive engagement strategies that can avoid distracting protracted activist campaigns and proxy contests and would experience substantially increased costs in identifying investors through such campaigns. Analysis on the potential increase in these costs, which are already substantial for public company issuers<sup>40</sup>, along with the negative impact on capital formation, is absent from the Commission's current analysis and merits further consideration.

#### **IV. 13F Changes To Be Considered As Part of a Comprehensive Modernization of Shareholder Reporting**

The Society welcomes the SEC's efforts to modernize the reporting regime applicable to institutional investment managers but does not believe modernization can be accomplished in a piecemeal fashion. The Society believes that efforts to modernize the Form 13F reporting regime should only be made in a holistic manner as part of a comprehensive modernization of shareholder reporting.<sup>41</sup> Such a holistic approach would update the regime to provide for more current information, reflect the reality of modern investment practices so that reports do not present a distorted and inaccurate view of investment activities and, because those reforms could impose some incremental costs on institutional investment managers, the Society would support an increase in the threshold for Form 13F reporting to \$450 million to reduce burdens on smaller managers.

##### *A. New \$450 million Threshold*

The Society appreciates that the reporting threshold for Section 13(f) has not been increased since it was first implemented and that the reforms discussed below would impose some incremental costs on some institutional investment managers. As a result, if the SEC is amenable to modernizing Form 13F holistically, the Society would be supportive of a modest increase in the 13F reporting threshold. However, for the reasons noted above, any small cost savings that might

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<sup>38</sup> Cyriac, Joseph; De Backer, Ruth. "Preparing for bigger, bolder shareholder activists" (McKinsey & Company 2014).

<sup>39</sup> Activist Insight Online. "In Depth: Giving Back" (January 8, 2019)(also noting Starboard Value received \$5.75 million in reimbursements from targets over two years and Third Point was reimbursed by as much as \$10 million in its 2014 proxy fight with Sotheby's).

<sup>40</sup> See Ide (noting that small- and medium-caps have to consider the possibility that spending on a proxy fight will result in losses).

<sup>41</sup> The Society urges the SEC to seek input on and modernize other aspects of its shareholder reporting regime as well – in particular, reporting on Schedule 13D.

be realized by some incremental investment managers by increasing the reporting threshold from \$100 million to \$3.5 billion are wildly disproportionate to the substantial deleterious effects of the Proposed Rules. As an alternative to such a dramatic increase in the reporting threshold and associated reduction in information made available to the public, issuers, and the SEC, the Society believes that an increase of the threshold to \$450 million, reflecting inflation,<sup>42</sup> would have a less harmful effect on issuers across all market capitalizations.

As demonstrated in **Table 6** below, under the proposed \$450 million threshold, issuers with market capitalizations below \$250 million would lose visibility into approximately 15.4% of their shares outstanding (on average) (versus a loss of approximately 38.9% under the Proposed Rules)<sup>43</sup>, while issuers with market capitalizations of \$10 billion or greater would lose visibility into approximately 1.4% of their shares outstanding (on average) (versus a loss of approximately 7.4% under the Proposed Rules).<sup>44</sup> Additionally, as demonstrated in **Table 7** below, under the proposed \$450 million threshold, issuers with market capitalizations of \$10 billion or greater would lose visibility into approximately 20.8% of their filers (on average) (versus a loss of approximately 55.4% under the Proposed Rules)<sup>45</sup> and issuers with market capitalizations below \$250 million would lose visibility into approximately 5.7% of their filers (on average) (versus a loss of approximately 27.9% under the Proposed Rules).<sup>46</sup>

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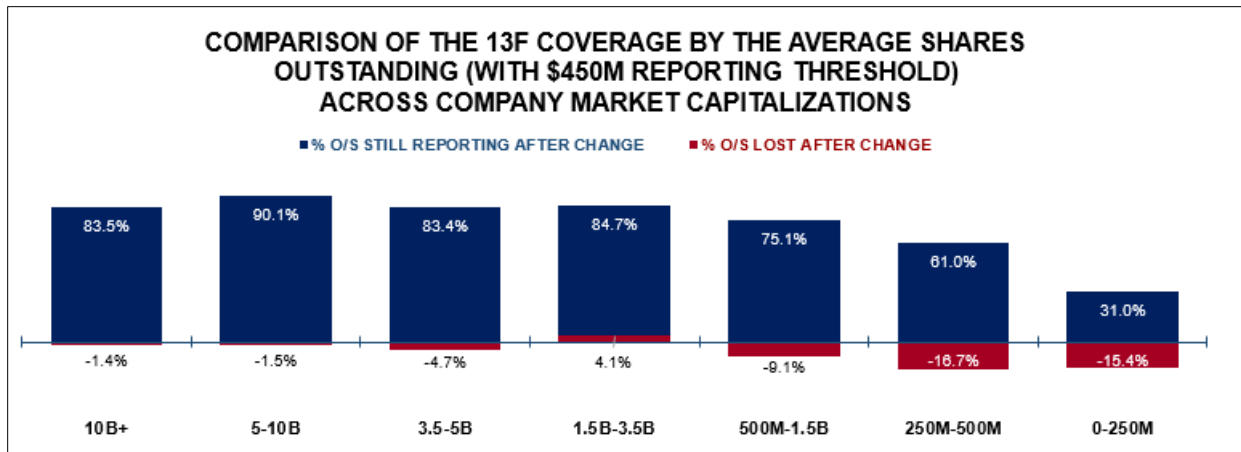
<sup>42</sup> See Proposing Release at 15.

<sup>43</sup> See Table 2.

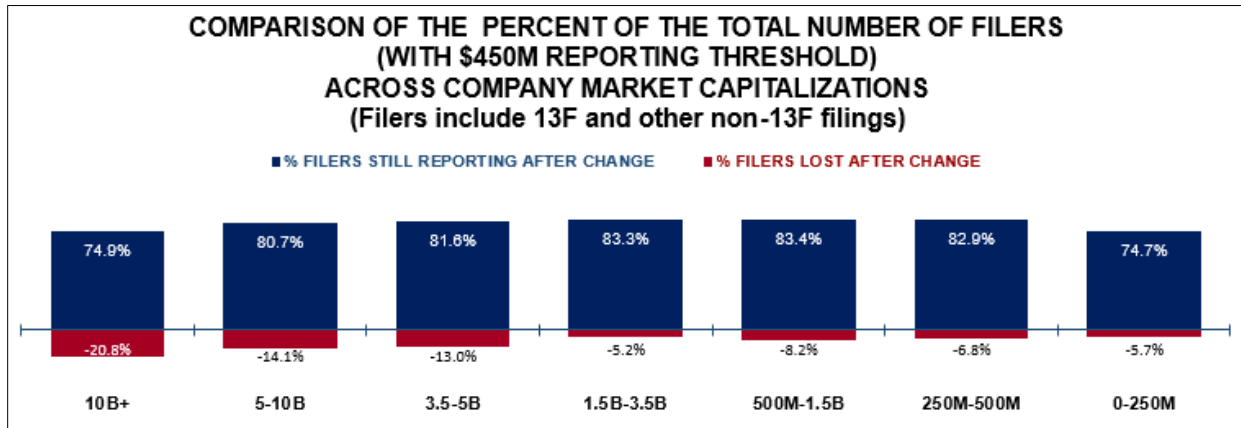
<sup>44</sup> See Table 2.

<sup>45</sup> See Table 3.

<sup>46</sup> See Table 3.



*Table 6 (Source: Innisfree M&A Incorporated, as of August 18, 2020)*



*Table 7 (Source: Innisfree M&A Incorporated, as of August 18, 2020)*

Further, under the proposed \$450 million threshold, issuers across all market capitalizations would lose visibility into approximately 7.5% of their shares outstanding (on average) (versus a loss of approximately 22.3% under the Proposed Rules).<sup>47</sup> Additionally, issuers across all market capitalizations would lose visibility into approximately 10.5% of their filers (on average) (versus a loss of approximately 36% under the Proposed Rules).<sup>48</sup> To that end, the Society believes that a proportional increase of the existing threshold to \$450 million would have a less harmful effect on issuers across all market capitalizations by allowing them to maintain greater visibility into their shareholder bases as well as to identify their investors, while still advancing the Commission’s goals of modernizing the information reported on Form 13F and

<sup>47</sup> See Tables 2 and 6.

<sup>48</sup> See Tables 3 and 7 and note 18.



increasing the information provided by institutional investment managers.<sup>49</sup> This approach would be consistent with the recommendation of the SEC’s Office of Inspector General (the “OIG”).<sup>50</sup>

### *B. Reduce Reporting Period to Two Business Days*

The Society believes reducing the significant lag between the date triggering Form 13F disclosure and the filing date would provide substantial benefits to issuers and the market as a whole, while imposing only limited additional costs on institutional investment managers. Currently, the Form 13F reporting regime can allow for over a year—up to 382 days—between when an institutional investment manager first becomes subject to the requirement to file Form 13F and when that manager’s first filing is due.<sup>51</sup> That first report would include information as of the end of the fourth calendar quarter of the year during which the institutional investment manager crosses the filing threshold and be filed 45 days after that quarter end. Subsequent reports are due 45 days after the end of each calendar quarter and present information as of the end of that calendar quarter.

The six-and-a-half weeks between quarter end, the time as of which a Form 13F presents information, and the date a Form 13F is required to be filed has long been the subject of criticism. In 2013, the Society, together with NYSE Euronext and the National Investor Relations Institute, petitioned the SEC to reduce the reporting deadline to two business days after the end of the calendar quarter.<sup>52</sup> The Society continues to believe that a shorter reporting cycle is appropriate. As noted in its 2013 petition, the month-and-a-half-long gap between the date of the information and when it is published inhibits the ability of issuers to identify, communicate with and engage with their shareholders in real time and results in outdated information being provided to the market and the SEC. The Society believes that institutional investment managers track their portfolios on a daily, if not more frequent, basis, and would be able to produce the limited information – consisting primarily of a list of holdings and their value – required by Section 13(f), within two business days of a reporting date without undue hardship,<sup>53</sup> especially because the date

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<sup>49</sup> In supporting that proposal, the Society notes that compliance costs for Form 13F have not increased in over time. In 1979, the SEC reported that the average compliance cost per Form 13F was approximately \$3,000 – or \$12,000 annually. SEC Release No. 34-15461 (January 5, 1979). Adjusted for inflation, that would equal approximately \$40,000 of annual costs today. In the Proposing Release, the SEC estimates annual compliance costs for Form 13F of between \$15,000 and \$30,000.

<sup>50</sup> See Office of the Inspector General, Review of the SEC’s 13(f) Reporting Requirements (Sept. 27, 2010) at pp. 26 – 27, available at <https://www.sec.gov/about/offices/oig/reports/audits/2010/480.pdf> (“OIG Report”).

<sup>51</sup> Investors are required to test if they have crossed the 13(f) threshold on the last trading day of each month. An investor that first crossed the 13(f) threshold on January 31, 2020 would not be required to file their first Form 13F until February 16, 2021 (February 14, 2021 being a Sunday and February 15, 2021 being a holiday). See Securities and Exchange Commission, Frequently Asked Questions About Form 13F, Question 25, available at: <https://www.sec.gov/divisions/investment/13faq.htm>.

<sup>52</sup> See Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934 (Feb. 1, 2013), available at <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>.

<sup>53</sup> Other mandated filings, including those that may be triggered by events rather than a set calendar date, have far shorter reporting deadlines. For example, a Form 4 is required to be filed within 2 business days of a trade that

as of which the information need be presented and the date on which it would be required to be filed would be set by regulation and known in advance.

Similarly, current technology allows the period of time between when an institutional investment manager becomes subject to reporting under Section 13(f) and the first reporting deadline to be substantially shortened. While the Society acknowledges that the filing of an initial Form 13F may require more effort than subsequent filings, we believe it is appropriate to require an institutional investment manager to file a Form 13F with information as of the end of quarter subsequent to the quarter during which that manager crosses the Section 13(f) threshold (*e.g.*, if a manager crosses the threshold on January 2, its first filing would include information as of June 30 and be filed in early July) and that such period should provide adequate time to prepare that filing.

In 1979, the SEC focused on the following benefit to justify changing Form 13F filing obligations from annual to quarterly: “Both corporations and financial reporting services asserted that quarterly reporting is needed to provide corporate treasurers with current information concerning institutions owning their stock. They pointed out that many stockholders take ownership in nominee or street name, making it difficult to trace such information and making it difficult to secure proxies on important corporate matters.”<sup>54</sup> That remains at least as relevant – if not more relevant – today as it was in 1979 given the massive increase in beneficial ownership of equity securities.

In addition, since 1979, the frequency and depth of engagement between issuers and their respective shareholders has expanded dramatically. However, the fact that Form 13F reports contain only outdated information substantially reduces the ability of issuers and market participants to actually engage with shareholders in real time with the benefit of that information. Although a long period between the end of a quarter and when information was required to be filed under Form 13F may have been necessary to accommodate systems used by institutional investment managers in 1979, technological advancements have made it so that is no longer the case, nor is it consistent with shareholders’ expectations regarding issuer engagement.

The Society acknowledges that a shortened reporting cycle may lead to calls from hedge funds regarding greater copycatting and front running, and the frequency of confidential treatment requests. As noted in the Society’s 2013 rulemaking petition, these concerns are unpersuasive and rest on the argument that “the 45-day delay period works to the advantage of Managers at the cost of other investors.”<sup>55</sup> We would add that for first-time 13F filers, the “delay period” is frequently far longer. To the extent there are specific positions for which institutional investment managers have particular concerns, those can be addressed through the Commission’s process for handling confidential treatment requests. In connection with a potential increase in confidential treatment

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triggers a Form 4 reporting obligation and a Current Report on Form 8-K is generally required to be filed within four business days of a triggering event.

<sup>54</sup> See Securities Exchange Act Release No. 15461 (Jan. 5, 1979) [44 FR 3033].

<sup>55</sup> See Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934 (Feb. 1, 2013), *available at* <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>.

requests, the Society would encourage the Commission and its staff (“Staff”) to adopt guidelines to the effect that the Staff will review, approve, reject or comment on confidential treatment requests within 30 days of receipt.

*C. The scope of Form 13F reporting should be enhanced to avoid reporting of incomplete and potentially misleading information*

The Society agrees with the finding of the OIG that “[t]he current Form 13F does not provide for the disclosure of all significant investment activities of institutional investment managers, and it could be improved to be more useful to the public.”<sup>56</sup> The 13F reporting regime presents an incomplete picture of both long positions in 13F securities held by institutional investment managers and the overall economic exposure of those managers to 13F securities.

Currently, Form 13F generally does not address reporting of derivative positions other than listed options. As a result, the treatment of positions that are economically equivalent to purchases of 13F securities remains unclear. The limited guidance that is available sheds little light on that matter. For example, in a letter issued to the New York State Teachers’ Retirement System, the Staff made clear that institutional investment managers that lend securities should report those securities on Form 13F – even though the borrower (and not the lender) holds title to those securities during the term of the loan.<sup>57</sup>

The Staff reasoned that: “[t]he Reporting Manager still has investment discretion over the loaned securities because he has the authority to sell the loaned securities, even though such transactions typically may not be consummated until the conclusion of the loan. In addition, the non-reporting of the loaned securities could render the data base created by Form 13F filings incomplete and therefore unsuitable for analyses of trading activities of Reporting Managers.... If Reporting Managers do not report loaned securities, it would be difficult to analyze the data of different reporting periods of a given Reporting Manager because no one will be able to determine whether the difference in holdings is caused by the lending of securities or the purchase or sale of securities. Thus, for example, one could improperly infer greater trading activity by a Reporting Manager when in actuality the Manager only lent securities. ... Finally, if institutional investment managers are not required to report loaned securities, they could avoid the reporting requirements of Rule 13f-1 by lending enough securities on the last trading day of each month to bring the total amount of investments they manage under \$100 million.”

However, other transactions that result in an institutional investment manager having economic exposure to a 13F security without directly holding that security are not addressed. For example, an institution that holds the long position in a physically-settled total return swap that references a 13F security is in an economic position similar to that of a securities lender – it remains economically exposed to the security, has a right to obtain the security at maturity of the transaction and does not currently have title to the security. If an institutional investment manager was not required to report the position held through that total return swap, on maturity of the total return swap, it would report an increase in its position in the relevant 13F security even though it may

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<sup>56</sup> OIG Report at p. 25.

<sup>57</sup> See SEC No-Action Letter, New York State Teachers’ Retirement System (avail. Nov. 16, 1990).

have acquired economic exposure to that position in a prior period – giving an inaccurate view of its trading activities. Similarly, it could use total return swaps or similar instruments to avoid 13F reporting requirements.

The Society believes that the SEC should clarify the treatment of derivative securities under Section 13(f), making clear that positions that are substantially equivalent economically to direct ownership of a 13F security should be reported. Equally importantly, the Society believes that the SEC should generally provide detailed guidance as to the treatment of derivative securities under the 13F reporting regime to ensure that all market participants are reporting on a like basis and that reports can be accurately interpreted.<sup>58</sup> Additionally, the current 13F reporting regime does not present a full picture of the trading activities of institutional investment managers because it does not require disclosure of short positions.<sup>59</sup> Reporting of short positions would provide substantial value to issuers by allowing them to better identify holders that have a significant economic position in the company – facilitating their ability to identify persons with whom the issuers should communicate and engage. The Society believes that institutional investment managers often utilize short positions as part of their investment strategy, both for hedging and speculative purposes. It is difficult to see how Form 13F can serve its primary goals – “[f]irst, to create a central repository of historical and current data about the investment activities of institutional investment managers. Second, to improve the body of factual data available regarding the holdings of institutional investment managers and thus facilitate consideration of the influence and impact of institutional investment managers on the securities markets and the public policy implications of that influence. Third, to increase investor confidence in the integrity of the U.S. securities markets”<sup>60</sup> – while requiring reporting that distorts the economic position and trading activities by institutional investment managers by excluding short positions.

The Society believes that institutional investment managers track their short positions on a daily basis, if not more frequently, and that the incremental burden of including those positions on a Form 13F together with long positions would be minimal. To the extent that specific short positions give rise to material concerns regarding front running or copycatting, those concerns are better addressed through the SEC’s process for confidential treatment requests than a blanket exclusion of those positions from public reporting.

\* \* \*

We appreciate the opportunity to provide comments on this proposal. We would be happy to provide you with further information to the extent you would find it useful.

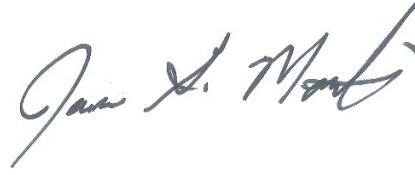
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<sup>58</sup> In addition to clarifying the treatment of derivatives, the Society believes that the SEC should harmonize the definition of “investment discretion” in Section 3(a)(35) of the Exchange Act and the definition of “beneficial owner” in Exchange Act Rule 13d-3 or, in the alternative, provide further guidance as to the interpretation of “investment discretion” and the differences between that “investment discretion” and “beneficial owner”.

<sup>59</sup> See Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934 (October 7, 2015), available at: <https://www.sec.gov/rules/petitions/2015/petn4-689.pdf>.

<sup>60</sup> See Proposing Release at text accompanying n. 20.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James G. Martin". The signature is fluid and cursive, with the first name "James" and last name "Martin" clearly legible.

James G. Martin  
General Counsel  
Society for Corporate Governance

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
William Hinman, Director, Division of Corporation Finance  
Dalia Blass, Director, Division of Investment Management

## Exhibit A

### **Innisfree Methodology**

#### **Table 1, Table 2, Table 3, Table 6, and Table 7**

##### 1. *Scope.*

The data used for the analysis presented is based on stocks of publicly traded U.S. companies. Any listing that is not shares of common stock (or is more than one type of common stock) was removed from the dataset (*e.g.*, dual class shares and American depository receipts).

##### 2. *Categorizing.*

The data was then broken into seven ranges based on the market capitalization of the underlying company for the stock. The seven market capitalization ranges are: \$10 billion or more, \$5 to \$10 billion, \$3.5 to \$5 billion, \$1.5 to \$3.5 billion, \$500 million to \$1.5 billion, \$250 to \$500 million, and less than \$250 million.

##### 3. *Sampling.*

Within each range, the median 30 stocks were taken as a sample group. The 30 stocks per range across the seven ranges totaled 210 sample stocks that were used for this analysis.

##### 4. *Analytics.*

The complete list of public holders was pulled for each sample company, that allowed for the following metrics to be calculated: percentage of total shares held by institutions with over \$100 million in Equity Assets Under Management (EAUM), percentage of total filers with over \$450 million in EAUM, percentage of total shares held by institutions with over \$450 million in EAUM, percentage of total filers with over \$3.5 billion in EAUM, and percentage of total shares held by institutions with over \$3.5 billion in EAUM. Each metric percentage was then averaged across the 30 stock sample group.

#### **Table 4**

##### 1. *Scope.*

The data used for the analysis presented is based on the S&P Capital IQ list of activists.<sup>61</sup> Only activists holding over \$100 million in EAUM were used in the dataset.

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<sup>61</sup> According to S&P Capital IQ, an entity (usually a hedge fund or a private investment fund) is flagged as activist based on one of the following criteria: (i) any entity or individual investor who describes themselves as an activist (sourced from websites, regulatory filings, news articles, etc.). This also includes other factors such as the firm's primary business activities and strategy, (ii) investors currently involved in an activism campaign against a particular company. The impact the firm is trying to make through the campaign is considered. Generally, the more serious the impact, the more chances of the investor being

## 2. *Categorizing.*

The data was then broken into three ranges based on the EAUM of the activist. The three ranges are: \$3.5 billion or more, \$450 to \$3.5 billion, and \$100 to \$450 million.

## 3. *Analytics.*

The complete list of publicly filed positions was pulled for each activist. The total dollar value was then calculated for all positions within three separate market capitalization ranges: \$10 billion or more, \$2 to \$10 billion, and less than \$2 billion. The total values were summed across each activist group for the final totals.

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labeled as an activist and (iii) investors with previous activism history is another criterion taken under consideration. Additionally, some firms who might have waged an activist campaign would still not be flagged as activists if they do not conform to the guidelines (*e.g.*, companies with primary firm type of bank or traditional money managers are not flagged as activists even if the company has waged campaigns).

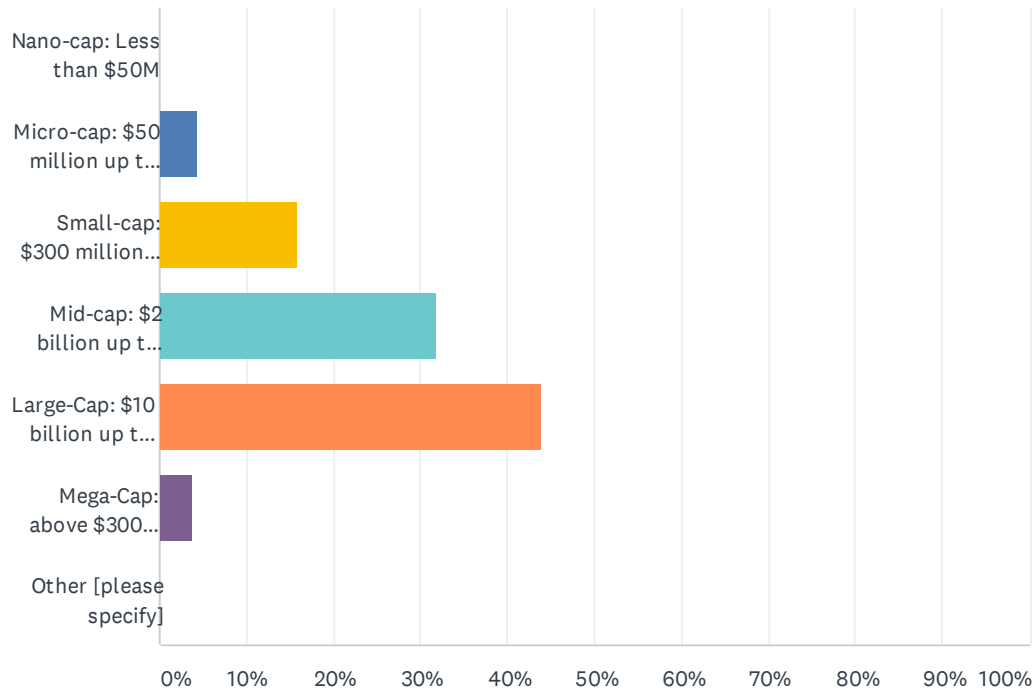
Exhibit B

**13F Comment Letter Survey Results**



## Q1 What is your market cap?

Answered: 157 Skipped: 1

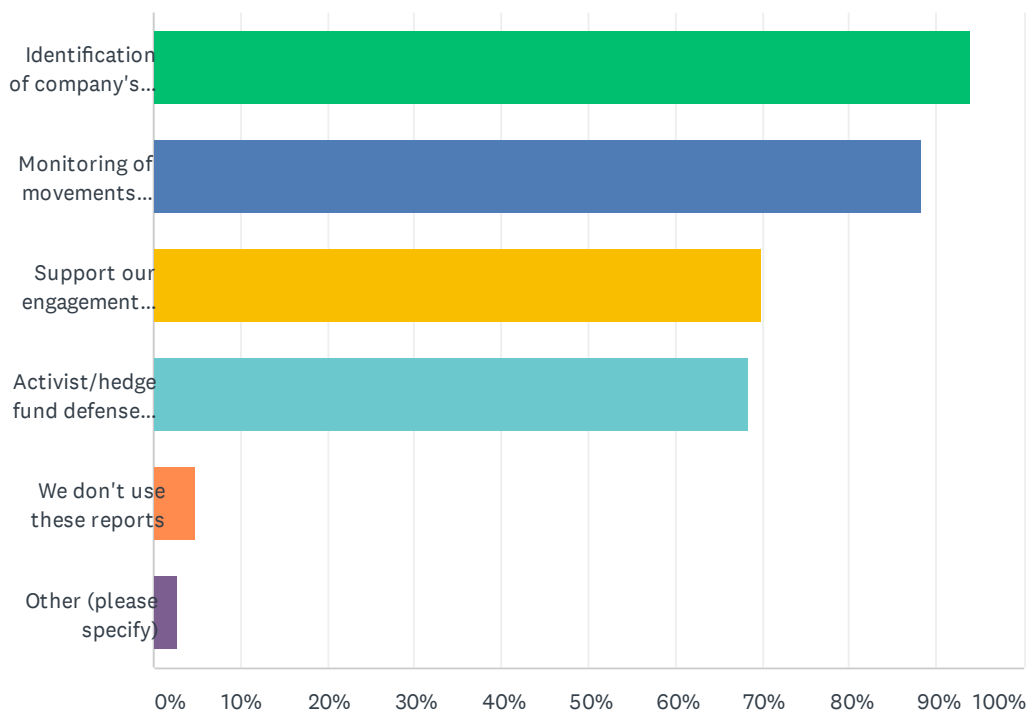


ANSWER CHOICES	RESPONSES
Nano-cap: Less than \$50M	0.00% 0
Micro-cap: \$50 million up to \$300 million	4.46% 7
Small-cap: \$300 million up to \$2 billion	15.92% 25
Mid-cap: \$2 billion up to \$10 billion	31.85% 50
Large-Cap: \$10 billion up to \$300 billion	43.95% 69
Mega-Cap: above \$300 billion	3.82% 6
Other [please specify]	0.00% 0
<b>TOTAL</b>	<b>157</b>

#	OTHER [PLEASE SPECIFY]	DATE
	There are no responses.	

## Q2 What does your company use Form 13F reports for? Select all that apply.

Answered: 146 Skipped: 12

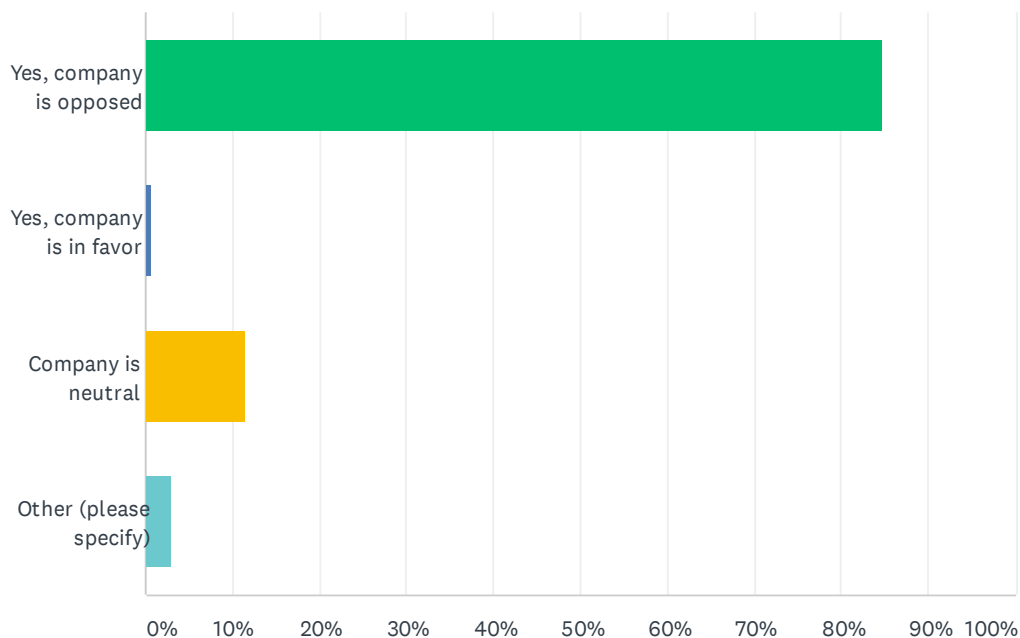


ANSWER CHOICES	RESPONSES
Identification of company's institutional investors (including ownership verification for investors seeking meetings with company management)	93.84% 137
Monitoring of movements in/out, accumulations/divestments of holdings in company's stock	88.36% 129
Support our engagement strategy and planning	69.86% 102
Activist/hedge fund defense notification and planning	68.49% 100
We don't use these reports	4.79% 7
Other (please specify)	2.74% 4
Total Respondents: 146	

#	OTHER (PLEASE SPECIFY)	DATE
1	Understand industry and peer ownership / movements	9/3/2020 11:01 AM
2	Identify potential investors that are invested in peers but not invested on our company.	9/2/2020 1:25 PM
3	Developing investor targets (who owned us in the past but not now, who owns peers not us, who owns companies with similar dividends, etc.) to give them meetings or ask if they'd like to meet with us.	9/1/2020 6:11 PM
4	Proxy Voting	8/31/2020 12:20 PM

**Q3 The SEC is proposing to increase the Form 13F reporting threshold of 13(f) securities (generally exchange-traded equity securities, certain options and warrants, shares of closed-end investment companies and certain convertible debt securities) from \$100 million to \$3.5 billion, which would reduce the number of reporting filers by nearly 90%. Does your company have a view on this proposal?**

Answered: 138 Skipped: 20



ANSWER CHOICES	RESPONSES
Yes, company is opposed	84.78% 117
Yes, company is in favor	0.72% 1
Company is neutral	11.59% 16
Other (please specify)	2.90% 4
<b>TOTAL</b>	<b>138</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	Unknown currently.	9/3/2020 1:01 PM
2	I don't want to speak on behalf of the company as we have not discussed this, but I am personally opposed	9/1/2020 8:14 AM
3	Our stockholder base tends toward smaller institutions, and this change would significantly impair our ability to monitor and understand our base.	8/31/2020 2:20 PM
4	The proposal itself is not particularly loathsome given our market cap, but the problem is that this is the only disclosure regime that requires activists to inform companies and the public of their positions. The reporting delay is the main problem--visibility should be increased through changing the reporting deadlines, not necessarily the thresholds.	8/31/2020 1:00 PM

## Q4 What are the company's primary concerns with the proposal?

Answered: 109 Skipped: 49

Public Company-Only 13F Comment Letter Survey

#	RESPONSES	DATE
1	Lack of visibility into our stockholders and ownership levels	9/4/2020 4:33 PM
2	The proposed reporting threshold change would further limit our already limited visibility into who owns the company's outstanding shares. The proposal is a step backwards on public company ownership transparency, where instead there are a number of seemingly simple steps with respect to institutional investor reporting requirements the SEC could and should take to increase transparency instead.	9/4/2020 3:13 PM
3	Not enough transparency around buying/selling activity.	9/4/2020 11:48 AM
4	Lack of visibility to our investors	9/3/2020 3:11 PM
5	Lack of transparency into a significant number of our shareholders, reducing shareholder engagement on a multitude of issues.	9/3/2020 2:23 PM
6	As a mid to small cap, this would eliminate almost all 13F's for us.	9/3/2020 2:15 PM
7	Lack of visibility of what certain hedge funds and activists are doing.	9/3/2020 2:14 PM
8	reduced transparency	9/3/2020 1:47 PM
9	proposal reduces effectiveness of targeting investor outreach,visibility to holdings of activists and others who contact us	9/3/2020 1:44 PM
10	That further reduction in visibility into our shareholder base (which is already relatively opaque) would serve to jeopardize our ability to assess shareholder engagement strategies and would materially limit our insight into activity in our stock among active investment managers with under \$3.5B in assets, which population comprises a substantial portion of our base.	9/3/2020 1:43 PM
11	Lack of transparency in market stock movement.	9/3/2020 12:18 PM
12	General lack of transparency	9/3/2020 11:49 AM
13	impact on IR and engagement programs	9/3/2020 11:42 AM
14	All of the issues noted in question 1	9/3/2020 11:34 AM
15	We are a small-cap company and we would lose a view of a vast majority of fund holders.	9/3/2020 11:19 AM
16	Transparency and visibility to ownership, time management and targeting investors, activist preparedness, among others.	9/3/2020 11:01 AM
17	loss of visibility to shareholder activity	9/3/2020 10:59 AM
18	The new standards would essentially allow a majority of 13F filers to go dark to us	9/3/2020 10:50 AM
19	Loss of useful information	9/3/2020 10:38 AM
20	lack of information -- threshold for reporting is too high	9/3/2020 10:37 AM
21	Significantly reduces institutional managers required to file 13F reports and we use these reports to track positions in our stock.	9/3/2020 10:35 AM
22	decreases transparency	9/3/2020 10:29 AM
23	lack of visibility into investor base and those moving in and out of our stock	9/3/2020 10:23 AM
24	In ability to identify the majority of its shareholders. Reduced ability to engage shareholders. lack of transparency and parity regarding disclosure.	9/3/2020 10:18 AM
25	leads to less transparency and hampers shareholder engagement. Not clear the cost benefits of filing are so significant to warrant a change at all.	9/3/2020 10:15 AM
26	lack of valuable information	9/3/2020 10:14 AM
27	This will completely make the reports useless to smaller to midsize public companies and make any proxy solicitation efforts far more difficult. The SEC should shelf this and never take it off the shelf again.	9/3/2020 10:14 AM
28	The proposed rules would hinder our ability to engage with investors and assess reasons for movements in our stock price, while reducing hedge fund transparency, making us more	9/3/2020 10:09 AM

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susceptible to activism that is likely to not be in the best interests of long term value creation for shareholders

29	The primary concerns are: (i) losing some insight into our shareholder base and (ii) potentially losing insight into activist investor ownership of our stock.	9/3/2020 10:03 AM
30	Lack of transparency	9/3/2020 10:02 AM
31	Loss of transparency.	9/2/2020 4:52 PM
32	Reduce transparency into our shareholders; do not agree with many of the reporting burden arguments made by smaller investors; appears to advantage hedge fund investors that may be focused on short-term profits to the disadvantage of long-term investors; increase in threshold is far larger than necessary to address the smaller investor concern about cost burden	9/2/2020 1:28 PM
33	Activists who will no longer have to report their positions; less transparency in shareholdings	9/2/2020 5:57 AM
34	lack of visibility to current shareholders, lack of visibility to activists building a stake, lose data on concentrated holders that could be good prospects, have to turn down meetings because we don't know how many shares they own and they won't tell us without 13-fs.	9/1/2020 6:12 PM
35	Visibility into ownership is already minimal and delayed; this would further diminish visibility.	9/1/2020 1:51 PM
36	that we will not have visibility into our smaller investors and potential activists.	9/1/2020 12:52 PM
37	Lack of transparency concerning share ownership.	9/1/2020 11:46 AM
38	Lose visibility to a significant portion of our shareholder base	9/1/2020 9:09 AM
39	Decrease of reportable data which is not otherwise disclosed.	9/1/2020 8:52 AM
40	Less transparency	9/1/2020 8:14 AM
41	Thresholds are too high -- to many investors are excluded from reporting. This reduces rather than improving transparency.	8/31/2020 8:55 PM
42	Makes it difficult to identify our shareholders and/or monitor changes in our investor base	8/31/2020 6:59 PM
43	Lack of transparency to the detriment of the company and all its shareholders	8/31/2020 5:49 PM
44	n/a	8/31/2020 5:00 PM
45	Inability to see changes in investments by large stockholders.	8/31/2020 4:09 PM
46	limits transparency	8/31/2020 3:38 PM
47	Significant impairing the company's ability to understand its investor demographic and trends, which underpins its engagement strategy.	8/31/2020 3:22 PM
48	We would have no visibility to the holdings of our large institutional investors, other than 13g and 13D filings	8/31/2020 3:07 PM
49	Decreased visibility into institutional investor base.	8/31/2020 2:59 PM
50	Reduction in transparency of stock ownership	8/31/2020 2:58 PM
51	This severely limits insight into our institutional shareholder base	8/31/2020 2:44 PM
52	Lack of transparency as to shareholders	8/31/2020 2:21 PM
53	See prior comment. Our base consists of smaller funds and institutions, and if this rule change goes through, we would lose almost all visibility into our base other than with respect to 13G and 13D filers.	8/31/2020 2:21 PM
54	This will severely limit our visibility into our share ownership - we have done the analysis and it will have a very negative impact on us.	8/31/2020 1:42 PM
55	knowledge base would be diminished	8/31/2020 1:36 PM
56	Wrong direction--need parity with company's disclosure obligations--even with current rule, very one sided.	8/31/2020 1:31 PM
57	All transparency in Company's ownership lost outside of greater than 5% holders	8/31/2020 1:26 PM

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58	Lack of visibility of holders as by far the majority of our shares are being held by funds which would not have to report their holdings anymore.	8/31/2020 1:19 PM
59	Lack of transparency and risk of rogue shareholders.	8/31/2020 1:16 PM
60	lack of visibility	8/31/2020 1:15 PM
61	The proposal limits transparency.	8/31/2020 1:07 PM
62	See my answer to number 3.	8/31/2020 1:00 PM
63	\$100 million to \$3.5 billion is too big of an increase and would eliminated approximately 65% of holders reporting today	8/31/2020 12:51 PM
64	It will make it even harder to ascertain who our shareholders are, who we should be engaging with, and whether there are activists investors in our stock.	8/31/2020 12:51 PM
65	Hinders activism monitoring; lack of transparency	8/31/2020 12:38 PM
66	We will lose important information about our shareholders.	8/31/2020 12:27 PM
67	it would make it considerably more difficult for many issuers to understand and engage with our shareholder base; this probably would be particularly acute at smaller companies, which are often held by smaller institutions that would fall below the proposed reporting threshold. While there's a possibility that some funds below the reporting threshold would continue to report their holdings voluntarily (as most institutions filed their 1Q 2020 13Fs "on time" despite being granted an extension), many would likely take advantage of the increased leniency; whereas many funds had concerns regarding the "optics" of being perceived to take advantage of the pandemic by filing after the original 1Q 2020 deadline, I would expect that the prospect of never having to file 13Fs again would be too enticing for some to pass up. If anything, the \$100m reporting threshold and 45-day post-quarter filing deadline should both be reduced, particularly given the advances in technology and increase in shareholder activism since the rules were written.	8/31/2020 12:24 PM
68	It significantly decreases transparency, which is contrary to nearly every disclosure rule change the SEC has implemented in recent and not-so-recent memory. While the 45-day period limits the practical utility of these reports (why isn't this being updated instead?), it doesn't make logical sense to expect more and more transparency from issuers but less from significant investors.	8/31/2020 12:23 PM
69	Decreased visibility into our shareholder base.	8/31/2020 12:22 PM
70	Less visibility into stockholders	8/31/2020 12:19 PM
71	Eliminates insights into who holds the company's stock	8/31/2020 12:19 PM
72	Unavailability of useful information if adopted.	8/31/2020 12:11 PM
73	Lack of transparency; ability of activists to accumulate a position with no visibility	8/31/2020 12:11 PM
74	Lack of transparency will limit our ability to identify, engage with and respond to shareholders and their concerns. The Nom/Gov Committee won't be able to factor in the policies of many of our significant holders if ownership is unknown.	8/31/2020 12:08 PM
75	Lack of visibility into who major shareholders are; being surprised by an activist who has been able to acquire a sizable stake without the company knowing	8/31/2020 12:07 PM
76	Lack of transparency around hedge fund activism and undermine our ability to engage with investors.	8/31/2020 12:07 PM
77	The proposal reduces transparency making it more difficult to identify institutional investors. There is currently relatively little compliance cost for institutional investors, so reducing transparency seems unjustified.	8/31/2020 12:05 PM
78	Less transparency and visibility	8/31/2020 12:01 PM
79	Tracking investors	8/31/2020 11:58 AM
80	Less transparency which could lead to instability and short-term activist activity that is opportunistic and against the interest of long-term investors.	8/31/2020 11:58 AM
81	Lack of transparency; the company has a right to know who owns its shares as well as be	8/31/2020 11:57 AM

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	aware of trends.	
82	The Company is not opposed with a higher threshold, but given the significantly higher threshold, we would not be able to identify the majority of our shareholder base outside of the >5% owners.	8/31/2020 11:53 AM
83	It would drastically reduce our visibility of changes in the ownership of our stock, which is nearly 90% institutionally held. It would negatively affect our ability to engage with our largest stockholders, which we do every year in the off-season. The rule needs to be "modernized", but in other ways (more frequent reports, and closer to the report date - not 45 days from the end of the quarter). A change of the magnitude in terms of dollar amount that is proposed would be extremely harmful, in our opinion.	8/31/2020 11:53 AM
84	Lack of transparency into investors and changes in holdings.	8/31/2020 11:52 AM
85	Proposed new reporting threshold is way too high!!!	8/31/2020 11:52 AM
86	Lack of visibility into shareholders initiating positions in our stock.	8/31/2020 11:51 AM
87	Lack of transparency; inability to proactively engage with institutional investors and understand investor perspectives, particularly on proposals to be voted on. Problem is amplified by reliance of many investors on proxy advisor reporting which may be incomplete or inaccurate	8/31/2020 11:51 AM
88	Unable to know who my shareholders are and tracking activists	8/31/2020 11:51 AM
89	The decrease in transparency of our shareholder base.	8/31/2020 11:48 AM
90	Reduction of transparency Elimination of tool used to identify investors for engagement. No cost benefit justification in the rule	8/31/2020 11:47 AM
91	Impede ability to collect information regarding holders, changes in holder shareholding, have visibility into potential activism	8/31/2020 11:44 AM
92	Makes it more difficult to (i) identify and engage with our top holders and (ii) identify if and when activist funds accumulate a position	8/31/2020 11:44 AM
93	Being able to track shareholders	8/31/2020 11:43 AM
94	Lack of information to inform our decisions	8/31/2020 11:42 AM
95	It would reduce the already very little transparency we have into who actually owns our stock.	8/31/2020 11:41 AM
96	Lack of transparency of ownership	8/31/2020 11:40 AM
97	It will make it harder for us to determine who our 10% owners are let alone our 5% owners. With the new threshold, none of our institutional investors would be required to report based solely on dollar amount.	8/31/2020 11:40 AM
98	Reduced transparency of hedge fund activism, reduced information for issuer-investor engagement, deprive retail investors of information they use to make investment decisions.	8/31/2020 11:39 AM
99	Inability to monitor movements in/out on a reasonable basis, in particular by activists.	8/31/2020 11:38 AM
100	Lack of visibility to investor base and tracking changes in ownership	8/31/2020 11:38 AM
101	Reduced visibility into our shareholder base, including the ability to identify activist.	8/31/2020 11:36 AM
102	13Fs are an essential means of understanding our shareholder base and changes thereto and represents an important tool for us in our engagement strategy	8/31/2020 11:34 AM
103	significant reduction in reporting by a large number of holders	8/31/2020 11:33 AM
104	Time period for when they are filed.	8/31/2020 11:33 AM
105	For a company of our size, the reporting increase would make them meaningless.	8/31/2020 11:33 AM
106	Significant reduction in the number of filers and corresponding reduction in information.	8/31/2020 11:33 AM
107	lack of visibility into current ownership (even worse than it already is given the delay in 13F reporting); inability to gauge ownership to assist in engagement planning; increased concerns about hedge funds and activists hiding ownership	8/31/2020 11:33 AM
108	Limitations on ability to evaluate stock ownership and proactively engage with shareholders.	8/31/2020 11:32 AM



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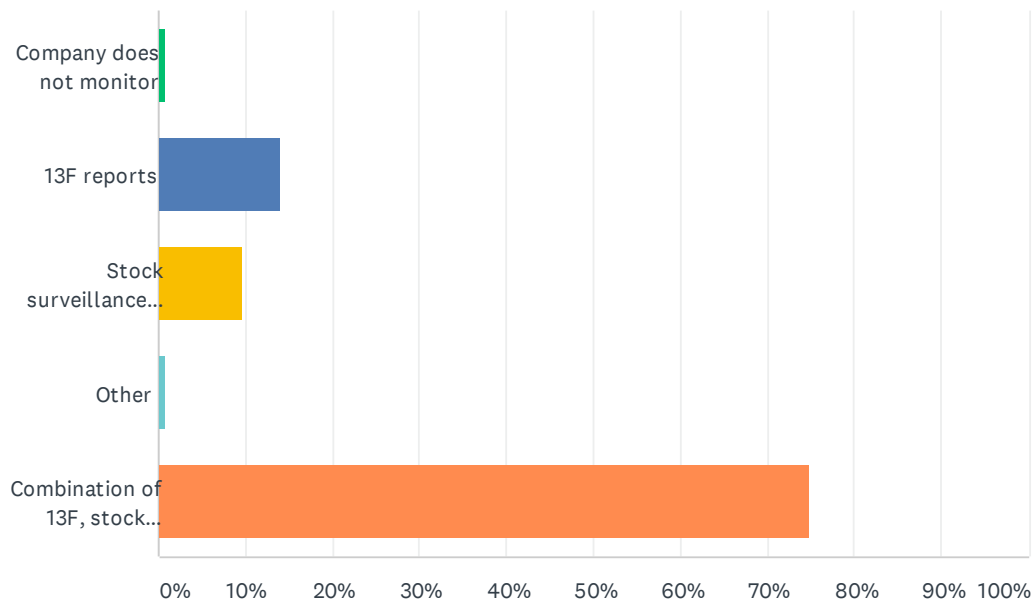
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109	Lack of transparency into investor base	8/31/2020 11:32 AM
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## Q5 How does your company monitor investor movements in the company's stock?

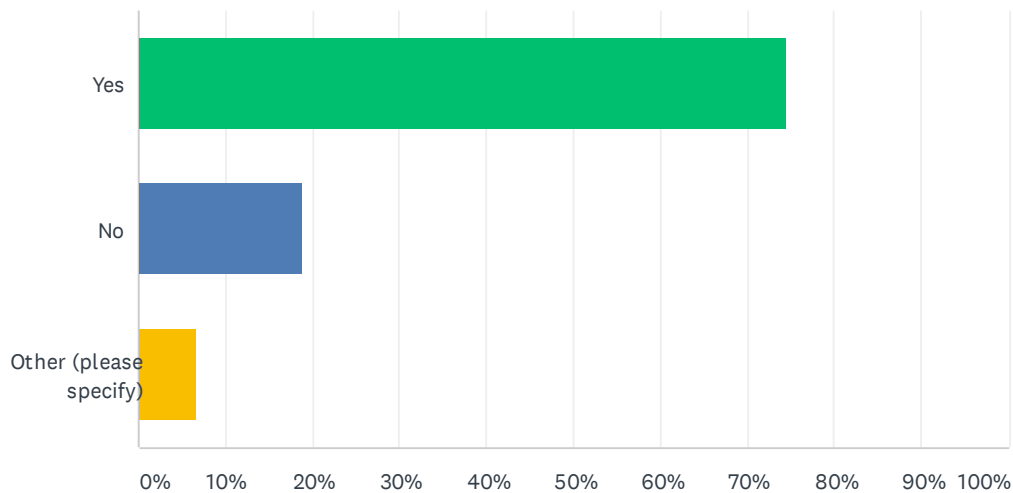
Answered: 136 Skipped: 22



ANSWER CHOICES	RESPONSES	
Company does not monitor	0.74%	1
13F reports	13.97%	19
Stock surveillance / stock watch firm	9.56%	13
Other	0.74%	1
Combination of 13F, stock watch, other	75.00%	102
<b>TOTAL</b>		<b>136</b>

## Q6 Does your company retain a stock surveillance/watch firm for information about investor movements in the company's stock?

Answered: 133 Skipped: 25

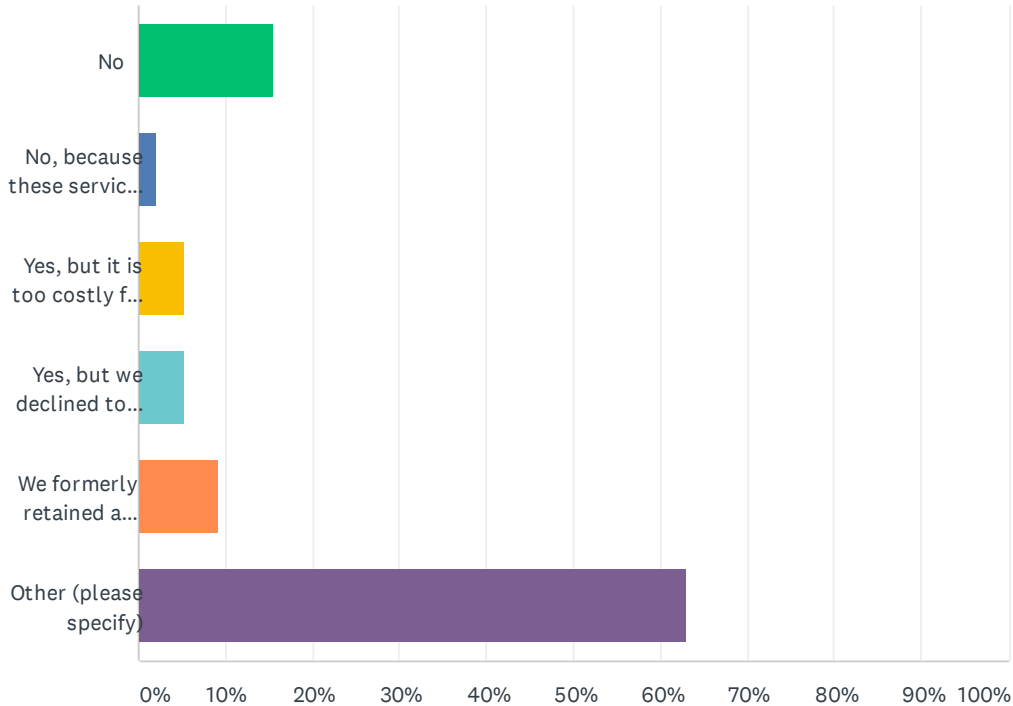


ANSWER CHOICES	RESPONSES	
Yes	74.44%	99
No	18.80%	25
Other (please specify)	6.77%	9
<b>TOTAL</b>		<b>133</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	yes, via program sponsored by the NYSE	9/3/2020 1:48 PM
2	Not currently, but we have in the past.	9/3/2020 10:36 AM
3	periodically	9/3/2020 10:15 AM
4	We monitor with 13F, and supplement as needed engaging a surveillance firm. We also have a law firm doing periodic reviews.	8/31/2020 8:56 PM
5	Bloomberg	8/31/2020 4:06 PM
6	We don't maintain a stock surveillance firm but we rely on third party information in addition to 13F filing information.	8/31/2020 2:22 PM
7	Not currently, but we have in the past.	8/31/2020 11:58 AM
8	Utilize other resources and third parties that monitor 13F filings	8/31/2020 11:55 AM
9	Our Investor Relations firm provides the information as well as our proxy advisor.	8/31/2020 11:40 AM

**Q7 Has your company considered retaining a stock surveillance/watch firm for information about investor movements in the company's stock? Select the most appropriate response.**

Answered: 97 Skipped: 61



ANSWER CHOICES	RESPONSES	
No	15.46%	15
No, because these services are out of reach financially for our company	2.06%	2
Yes, but it is too costly for our company	5.15%	5
Yes, but we declined to retain one for reasons unrelated to our company's financial position	5.15%	5
We formerly retained a stock surveillance/watch firm, but don't do so currently	9.28%	9
Other (please specify)	62.89%	61
<b>TOTAL</b>		<b>97</b>

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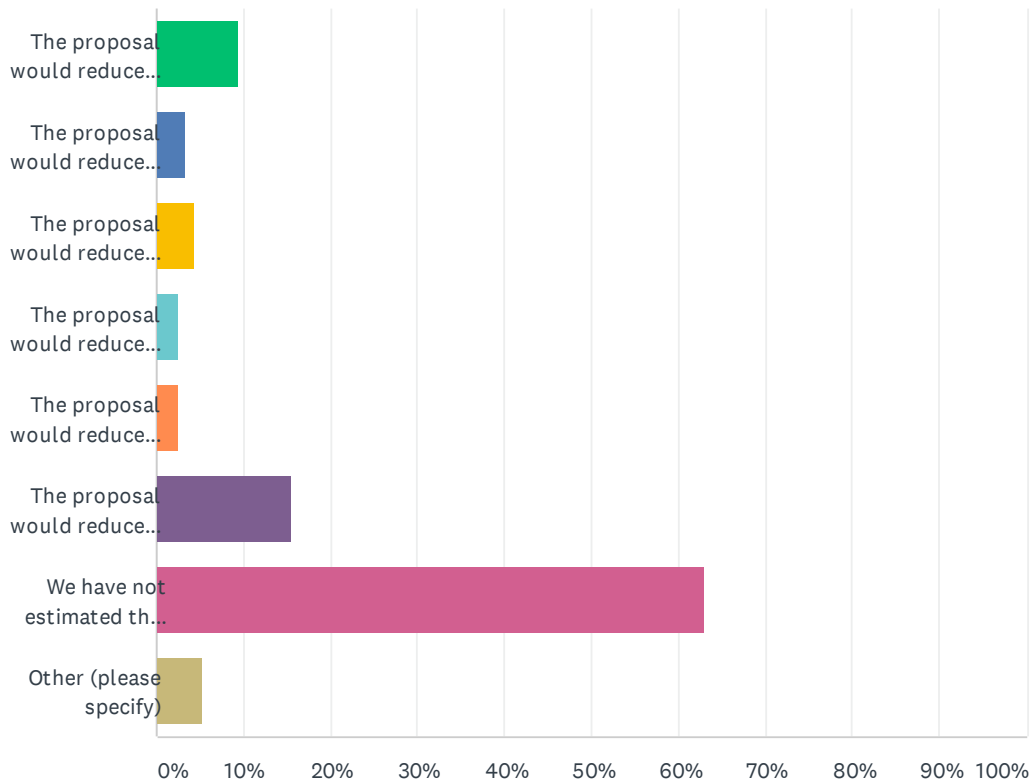
#	OTHER (PLEASE SPECIFY)	DATE
1	We had previously utilized stock surveillance, but cancelled it years ago due to inherent subjectivity and reliability concerns around stock surveillance information. We have recently, however, once again contracted for these services.	9/4/2020 4:32 PM
2	We retain	9/4/2020 9:04 AM
3	We currently retain a stock surveillance/watch firm.	9/3/2020 3:12 PM
4	We currently retain such a firm.	9/3/2020 2:23 PM
5	We retain a stock watch firm.	9/3/2020 2:15 PM
6	We have considered and have not made a decision yet.	9/3/2020 2:15 PM
7	we use the service sponsored by the NYSE, but would not pay of it since service relies on too much guess work IMO	9/3/2020 1:50 PM
8	We do use a firm.	9/3/2020 1:00 PM
9	We do.	9/3/2020 12:19 PM
10	Yes, we currently retain a stock watch firm	9/3/2020 11:35 AM
11	We did not find the work helpful, and now we have limited funds.	9/3/2020 11:20 AM
12	Financially out of reach and accuracy of reporting poor	9/3/2020 11:03 AM
13	We do retain one	9/3/2020 11:02 AM
14	we have one	9/3/2020 10:38 AM
15	we do have a stock watch service	9/3/2020 10:30 AM
16	We already do	9/3/2020 10:24 AM
17	We use one.	9/3/2020 10:24 AM
18	We do retain a stock surveillance firm. If 13F requirements created MORE transparency (instead of less as proposed) perhaps our shareholders would not have to bear this added expense	9/3/2020 10:11 AM
19	Yes we currently retain one.	9/2/2020 5:58 AM
20	we do use them despite how expensive it is	9/1/2020 6:12 PM
21	We already retain a stock surveillance/watch firm.	9/1/2020 1:52 PM
22	We retain a stock surveillance firm.	9/1/2020 11:47 AM
23	We retain a stock monitoring firm to better understand our investor base and to monitor for signs of any potential activist activity	8/31/2020 9:20 PM
24	We retain such a firm	8/31/2020 4:10 PM
25	We currently retain such a firm	8/31/2020 3:23 PM
26	We have retained a stock surveillance/watch firm.	8/31/2020 3:00 PM
27	we currently use a firm	8/31/2020 2:45 PM
28	yes, we do.	8/31/2020 2:22 PM
29	Yes--currently have one.	8/31/2020 1:32 PM
30	we retain a firm	8/31/2020 1:29 PM
31	I answered yes to previous question.	8/31/2020 1:16 PM
32	We use one.	8/31/2020 1:08 PM
33	we have one	8/31/2020 1:05 PM
34	We use a firm.	8/31/2020 1:01 PM

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35	We do retain a firm	8/31/2020 12:52 PM
36	Yes - we already have one.	8/31/2020 12:24 PM
37	Our Investor Relations team retains a firm for this purpose	8/31/2020 12:21 PM
38	We have a stock surveillance firm.	8/31/2020 12:12 PM
39	We have a stock watch firm that does this	8/31/2020 12:09 PM
40	NA; we retain a service and currently use it	8/31/2020 12:08 PM
41	N/A	8/31/2020 12:06 PM
42	We do retain a stock surveillance/watch firm - see our response to question 6.	8/31/2020 12:00 PM
43	t	8/31/2020 11:56 AM
44	We do retain one, and will continue to do so, but those firms rely on 13F filings, so their effectiveness would be greatly diminished if the rule change goes through.	8/31/2020 11:55 AM
45	WE already retain a stock surveillance firm.	8/31/2020 11:52 AM
46	We have one.	8/31/2020 11:52 AM
47	Question is N/A as we retain such a firm	8/31/2020 11:52 AM
48	retained	8/31/2020 11:52 AM
49	Not applicable. We currently retain such a firm (see #6).	8/31/2020 11:49 AM
50	N/A - we retain one	8/31/2020 11:45 AM
51	None of the above	8/31/2020 11:45 AM
52	We already do this	8/31/2020 11:41 AM
53	See answer to prior question	8/31/2020 11:41 AM
54	Yes, we do retain one now.	8/31/2020 11:40 AM
55	We do engage a firm.	8/31/2020 11:39 AM
56	We already have a stock surveillance firm.	8/31/2020 11:37 AM
57	We have retained a firm for this purpose	8/31/2020 11:35 AM
58	Yes and we currently engage such a firm.	8/31/2020 11:35 AM
59	We currently have one.	8/31/2020 11:34 AM
60	currently do	8/31/2020 11:33 AM
61	Yes, we currently do retain a stock watch firm	8/31/2020 11:32 AM

## Q8 If you have or are able to estimate the impact of the increased threshold on your company, select all that apply:

Answered: 116 Skipped: 42



ANSWER CHOICES	RESPONSES	
The proposal would reduce our visibility to shares outstanding by more than 4%	9.48%	11
The proposal would reduce our visibility to shares outstanding by more than 8%	3.45%	4
The proposal would reduce our visibility to shares outstanding by more than 12%	4.31%	5
The proposal would reduce our visibility to holders by more than 20%	2.59%	3
The proposal would reduce our visibility to holders by more than 30%	2.59%	3
The proposal would reduce our visibility to holders by more than 40%	15.52%	18
We have not estimated the impact on our visibility to holders or holdings but believe it would be substantial	62.93%	73
Other (please specify)	5.17%	6
Total Respondents: 116		

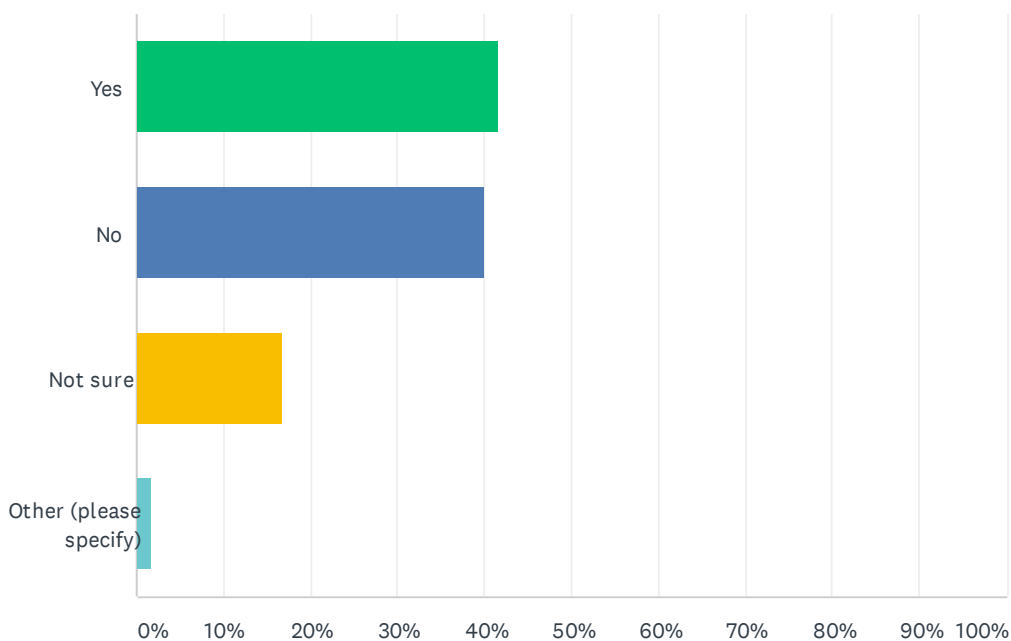
Public Company-Only 13F Comment Letter Survey

#	OTHER (PLEASE SPECIFY)	DATE
1	It would reduce our visibility to shares outstanding by less than 4%	9/3/2020 11:49 AM
2	included are several top 50 holders that we would lose visibility to, would reduce our ability to address all of our large shareholders	8/31/2020 1:34 PM
3	We have not yet estimated the impact but do not believe it will be substantial	8/31/2020 1:34 PM
4	t	8/31/2020 11:56 AM
5	67% of our holders would become invisible if the threshold is increased.	8/31/2020 11:38 AM
6	in process	8/31/2020 11:34 AM



**Q9 One impact of the proposal would be to reduce visibility into the holdings of activist investors and other shareholders that seek to influence the management and governance of public companies. Has your company engaged with such shareholders (publicly or privately) or been subject to shareholder activism by an investor that manages assets under the proposed threshold (e.g., Ancora Advisors, Corvex Management, Engaged Capital, Greenlight Capital, JANA Partners, Karpus Management, Legion Partners, Land & Buildings, Marcato Capital, Sachem Head, Starboard Value, etc.)?**

Answered: 120 Skipped: 38

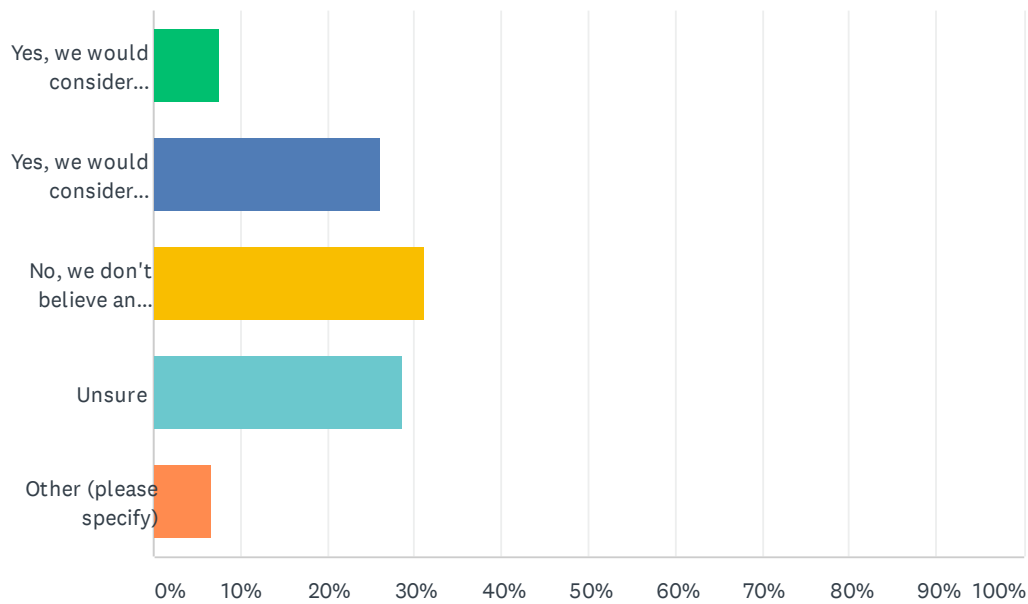


ANSWER CHOICES	RESPONSES
Yes	41.67% 50
No	40.00% 48
Not sure	16.67% 20
Other (please specify)	1.67% 2
<b>TOTAL</b>	<b>120</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	t	8/31/2020 11:56 AM
2	We have engaged on a friendly basis.	8/31/2020 11:42 AM

## Q10 Would your company consider supporting a smaller increase in the reporting threshold with periodic adjustments for inflation?

Answered: 119 Skipped: 39



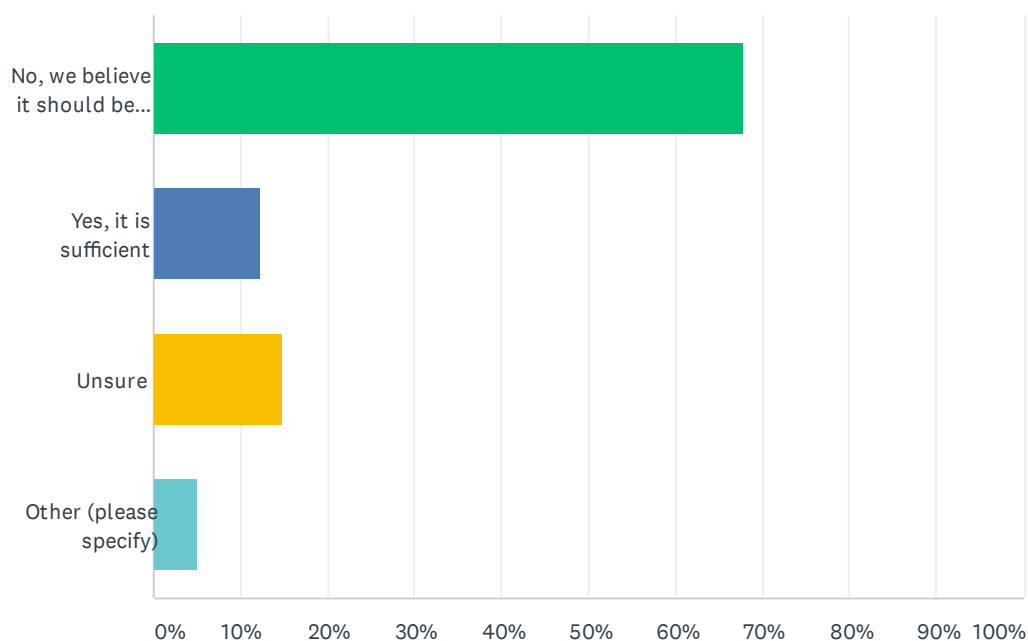
ANSWER CHOICES	RESPONSES	
Yes, we would consider supporting an increase to \$450 million to reflect an inflationary adjustment since the 1978 promulgation of the rule	7.56%	9
Yes, we would consider supporting a modest increase of some undetermined amount to reflect an inflationary adjustment since the 1978 promulgation of the rule	26.05%	31
No, we don't believe an increase is appropriate given the market use and utility of the current threshold, which differs from the SEC's initially stated goals, which were established at a time when shareholder engagement and market dynamics were very different	31.09%	37
Unsure	28.57%	34
Other (please specify)	6.72%	8
<b>TOTAL</b>		<b>119</b>

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#	OTHER (PLEASE SPECIFY)	DATE
1	Yes, we would support either 1 or 2 above.	9/2/2020 5:59 AM
2	It really depends on the magnitude of the change	8/31/2020 2:47 PM
3	We would have to do further analysis to determine the impact to us as a result of a lower threshold.	8/31/2020 1:44 PM
4	would consider a reasonable increase but that keeps the transparency needed, and advocate for disclosure of short positions as that helps with transparency and knowing who is truly in the stock	8/31/2020 1:38 PM
5	Rules need to go in the opposite direction--more and realtime stockholder disclosure.	8/31/2020 1:33 PM
6	Undecided at present time	8/31/2020 1:30 PM
7	We would support a modest increase to account for inflation, but only if it were part of a larger modernization package that included things like much shorter reporting deadlines and/or more frequent reports.	8/31/2020 11:57 AM
8	t	8/31/2020 11:56 AM

Q11 13-F reports are currently due 45 days after the end of each quarter. Other trade associations representing the business community have advocated for a shorter reporting deadline, (e.g., two business days after the end of each quarter). Does your company believe the 45-day reporting deadline is sufficient for your purposes?

Answered: 121 Skipped: 37

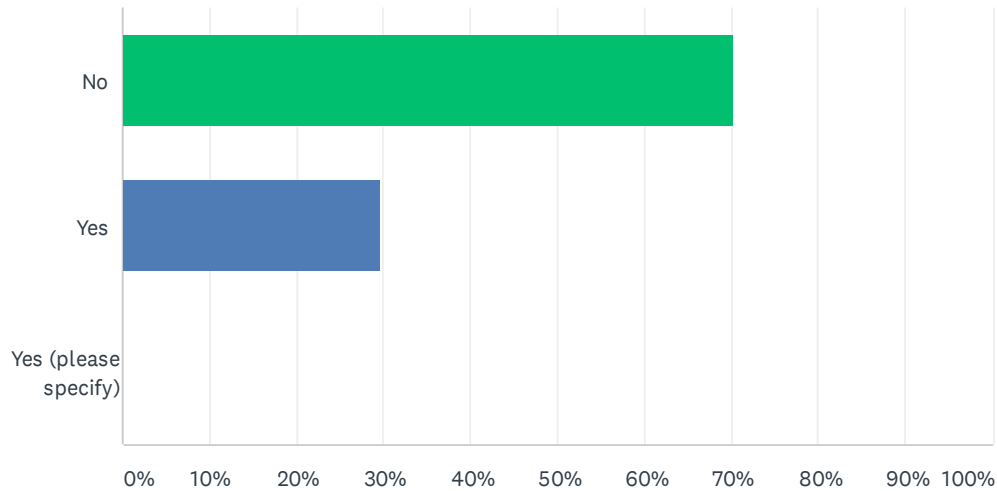


ANSWER CHOICES	RESPONSES	
No, we believe it should be shortened	67.77%	82
Yes, it is sufficient	12.40%	15
Unsure	14.88%	18
Other (please specify)	4.96%	6
<b>TOTAL</b>		<b>121</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	Likely sufficient, but shorter is better.	8/31/2020 3:41 PM
2	More frequent reporting would be nice, but creates a burden for the reporting companies. We are OK with the 45 day period.	8/31/2020 1:44 PM
3	is rear looking so prefer to keep more entities required to disclose rather than less number of disclosures but in a shorter timeframe. Only go shorter if all still have to disclose	8/31/2020 1:39 PM
4	Undecided at present time	8/31/2020 1:30 PM
5	t	8/31/2020 11:56 AM
6	Preference would be for a shorter period to provide better visibility into transactions and holdings	8/31/2020 11:35 AM

## Q12 Have any of your retail investors, institutional investors, proxy solicitors, advisors or other stakeholders outside the company informed you of their views on this proposal?

Answered: 118 Skipped: 40

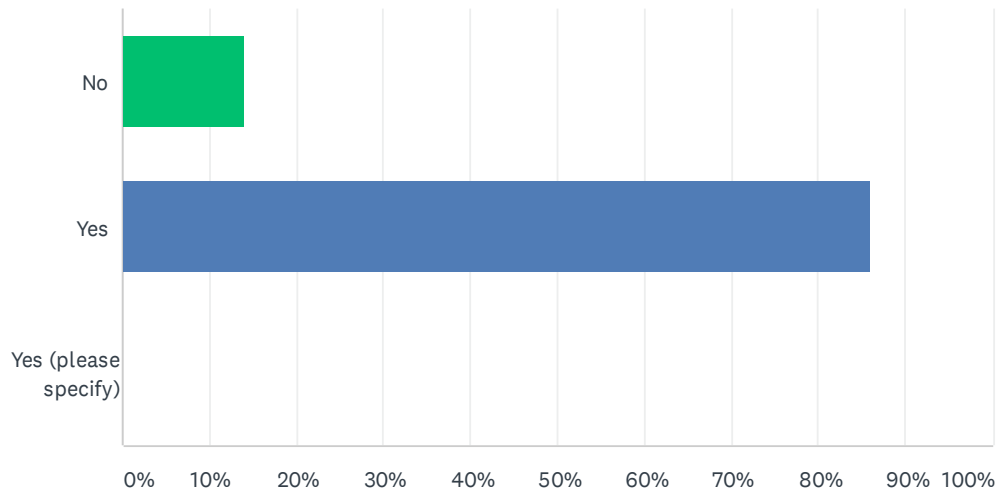


ANSWER CHOICES	RESPONSES
No	70.34% 83
Yes	29.66% 35
Yes (please specify)	0.00% 0
<b>TOTAL</b>	<b>118</b>

#	YES (PLEASE SPECIFY)	DATE
	There are no responses.	

### Q13 Does your company use 13F reports in formulating its shareholder engagement strategy and meetings?

Answered: 115 Skipped: 43

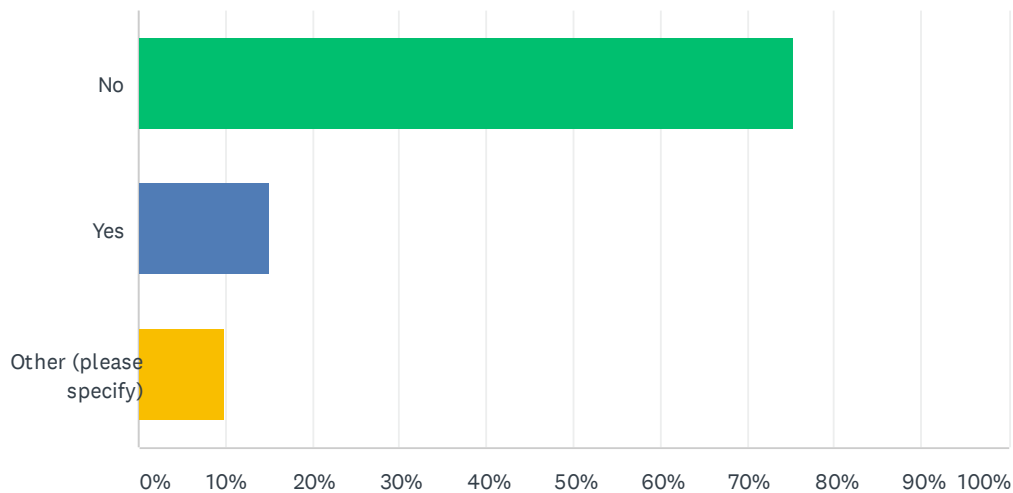


ANSWER CHOICES	RESPONSES
No	13.91% 16
Yes	86.09% 99
Yes (please specify)	0.00% 0
<b>TOTAL</b>	<b>115</b>

#	YES (PLEASE SPECIFY)	DATE
	There are no responses.	

## Q14 Has your company had experience with shareholders misrepresenting their holdings in seeking engagement with management or the board?

Answered: 113 Skipped: 45

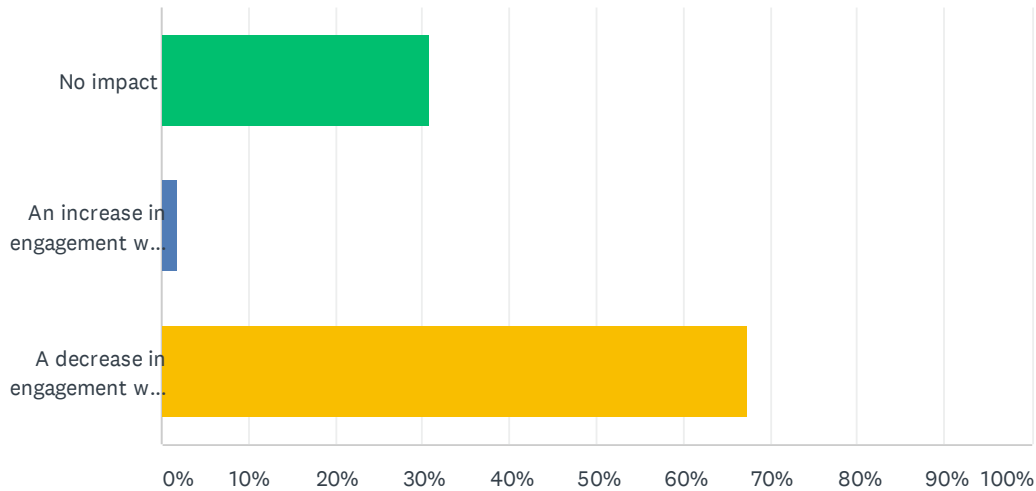


ANSWER CHOICES	RESPONSES	
No	75.22%	85
Yes	15.04%	17
Other (please specify)	9.73%	11
<b>TOTAL</b>		<b>113</b>

#	OTHER (PLEASE SPECIFY)	DATE
1	Difficult to know with certainty, however, we are aware of – and engage with – funds who have disclosed to us they regularly use options and other derivatives which are not represented in 13F filings.	9/4/2020 4:38 PM
2	Unsure.	9/3/2020 2:26 PM
3	unsure	9/3/2020 10:28 AM
4	Not sure. Have a current "stockholder" that we can not confirm ownership.	9/3/2020 10:17 AM
5	No but we fear that could happen under the new rules, given our inability to validate claims.	9/3/2020 10:14 AM
6	We have had some public pension funds resist disclosing their shareholdings in connection with their interest in engaging, but we don't believe this is the type of experience that the rule is designed to address as the pension funds are not 13F filers.	9/2/2020 1:38 PM
7	No knowledge of any recent experience	8/31/2020 12:27 PM
8	We have had representations that shareholding were different that what was ultimately disclosed on a 13F, but it is difficult to call this a misrepresentation. Certain shareholders change the position on a daily basis.	8/31/2020 11:50 AM
9	not sure	8/31/2020 11:39 AM
10	not sure	8/31/2020 11:36 AM
11	unknown	8/31/2020 11:35 AM

### Q15 If the proposed rule were implemented, what do you believe would be the impact on shareholder engagement with investors smaller than \$3.5 billion AUM?

Answered: 107 Skipped: 51

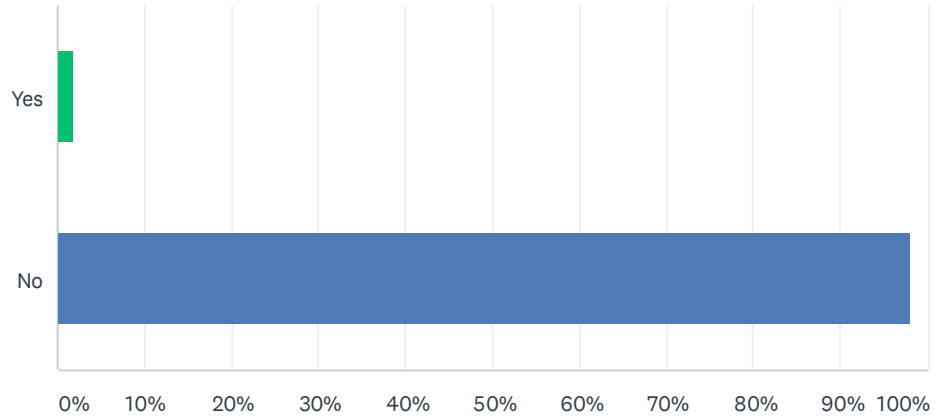


ANSWER CHOICES	RESPONSES	
No impact	30.84%	33
An increase in engagement with investors with less than \$3.5 billion AUM	1.87%	2
A decrease in engagement with investors with less than \$3.5 billion AUM	67.29%	72
TOTAL		107



## Q16 Does the proposed rule facilitate shareholder engagement?

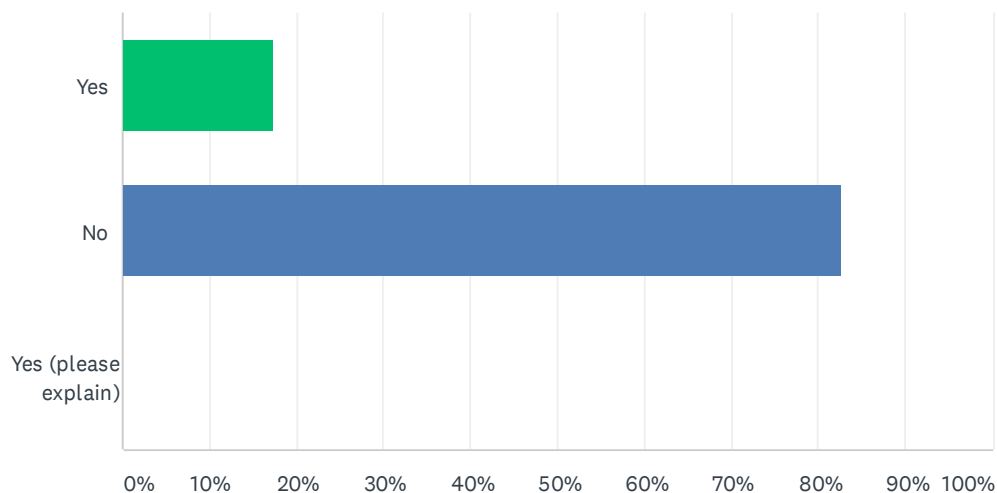
Answered: 111 Skipped: 47



ANSWER CHOICES	RESPONSES	
Yes	1.80%	2
No	98.20%	109
TOTAL		111

## Q17 Does your company use 13F reports to assist in targeting investors with respect to equity offerings?

Answered: 109 Skipped: 49

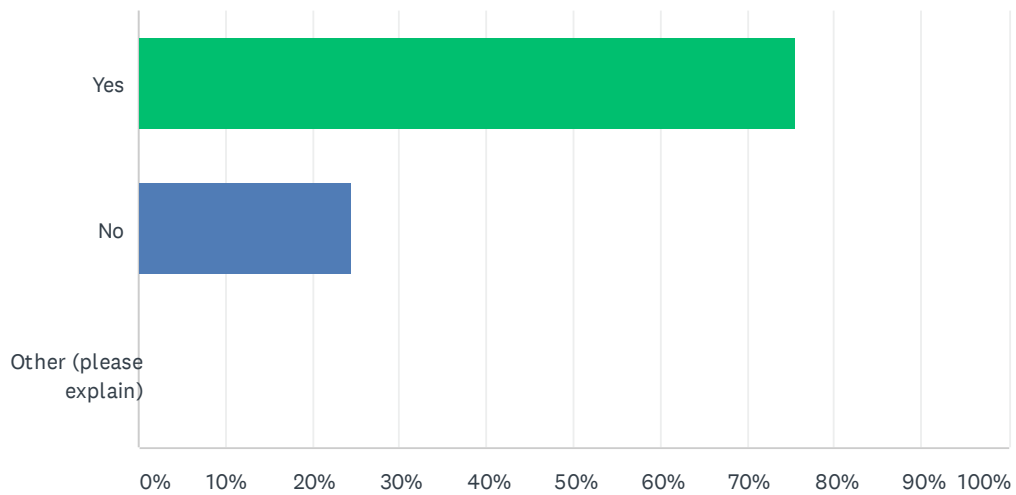


ANSWER CHOICES	RESPONSES
Yes	17.43% 19
No	82.57% 90
Yes (please explain)	0.00% 0
<b>TOTAL</b>	<b>109</b>

#	YES (PLEASE EXPLAIN)	DATE
	There are no responses.	

## Q18 Does your company use 13F information in preparation for shareholder meetings?

Answered: 110 Skipped: 48

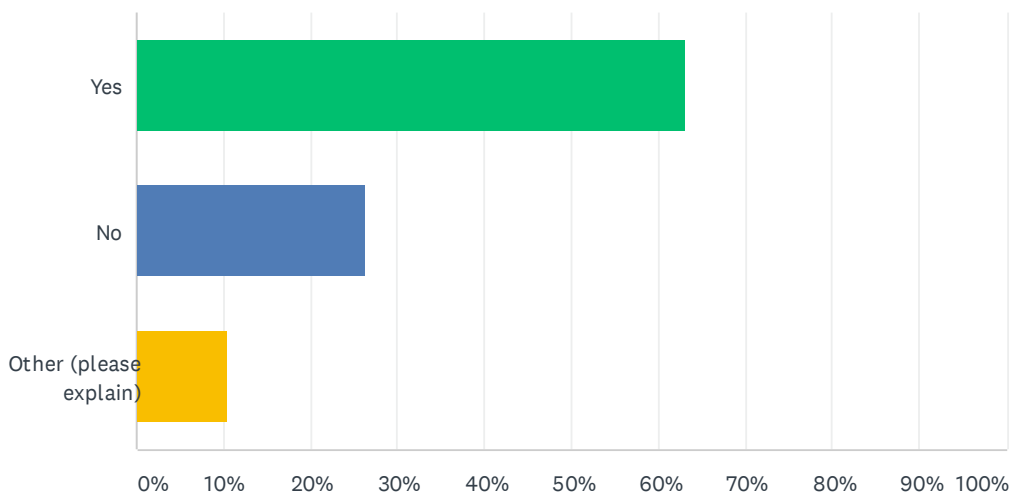


ANSWER CHOICES	RESPONSES	
Yes	75.45%	83
No	24.55%	27
Other (please explain)	0.00%	0
<b>TOTAL</b>		<b>110</b>

#	OTHER (PLEASE EXPLAIN)	DATE
	There are no responses.	

## Q19 Does your company anticipate incurring any costs, financial or otherwise, if it has less visibility into its shareholder base?

Answered: 106 Skipped: 52



ANSWER CHOICES	RESPONSES	
Yes	63.21%	67
No	26.42%	28
Other (please explain)	10.38%	11
<b>TOTAL</b>		<b>106</b>

#	OTHER (PLEASE EXPLAIN)	DATE
1	not sure	9/3/2020 2:17 PM
2	possibly	9/3/2020 1:54 PM
3	Not sure	9/3/2020 11:05 AM
4	Possibly, if we need to retain a surveillance firm.	9/3/2020 10:40 AM
5	We have not looked into this yet.	9/1/2020 11:49 AM
6	Unsure at this time	8/31/2020 2:49 PM
7	Have not evaluated	8/31/2020 2:25 PM
8	will make targeting firms less accurate so may make efforts more difficult and therefore could increase costs would make us more reactive and penalizes the newer or smaller investment firms making it harder for them to get companies' time	8/31/2020 1:44 PM
9	Not sure	8/31/2020 12:01 PM
10	unsure	8/31/2020 11:55 AM
11	unsure	8/31/2020 11:43 AM

**Q20 What types of measures (if any) does your company anticipate implementing to increase shareholder engagement in response to the proposed rules?**

Answered: 52 Skipped: 106

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#	RESPONSES	DATE
1	On the contrary, the proposed rule will likely lead to increased engagement with the larger funds that do report, at the expense of the smaller funds where there is zero visibility.	9/4/2020 4:48 PM
2	None	9/4/2020 11:52 AM
3	No current plans	9/3/2020 3:22 PM
4	Unsure at this time.	9/3/2020 2:26 PM
5	Using enhanced stock watch services	9/3/2020 2:17 PM
6	we may look more closely at engaging a stock watch service	9/3/2020 1:49 PM
7	Not sure	9/3/2020 11:05 AM
8	additional third party surveillance and reports	9/3/2020 11:03 AM
9	none	9/3/2020 10:41 AM
10	Unsure at this point.	9/3/2020 10:40 AM
11	A formal plan is being developed	9/3/2020 10:21 AM
12	Not sure as we think the rule will be scrapped.	9/3/2020 10:18 AM
13	unclear at this time	9/3/2020 10:15 AM
14	Undecided	9/2/2020 4:58 PM
15	Not sure, but suspect companies will end up having to pay internal and/or external parties to do additional surveillance which is a cost that will be borne by issuers	9/2/2020 1:42 PM
16	we would turn down meetings with investors who don't disclose 13-fs. They will have less access to our management. we have to prioritize those who disclose their holdings.	9/1/2020 6:15 PM
17	Increased surveillance efforts/costs.	9/1/2020 1:54 PM
18	Increased surveillance/stock watch	9/1/2020 12:19 PM
19	Unknown at this time.	9/1/2020 11:50 AM
20	Unsure at this time	9/1/2020 8:21 AM
21	Great reliance on stock watch services	8/31/2020 7:01 PM
22	More reliance on surveillance firms	8/31/2020 3:26 PM
23	No planned measures to increase shareholder engagement at this time.	8/31/2020 3:10 PM
24	Unsure at this time	8/31/2020 2:49 PM
25	Have not decided/formalized.	8/31/2020 2:26 PM
26	Unsure at this point.	8/31/2020 1:46 PM
27	Unsure.	8/31/2020 1:35 PM
28	We are still evaluating	8/31/2020 1:25 PM
29	too soon to know	8/31/2020 1:20 PM
30	None.	8/31/2020 1:04 PM
31	Not sure yet	8/31/2020 12:54 PM
32	no sure	8/31/2020 12:36 PM
33	No current plans	8/31/2020 12:28 PM
34	None	8/31/2020 12:26 PM
35	Greater reliance on proxy solicitors	8/31/2020 12:25 PM

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36	Unknown at this time.	8/31/2020 12:09 PM
37	I think that's the issue - that the proposed rules would decrease shareholder engagement.	8/31/2020 12:06 PM
38	We will get investor feedback from our Top 40 investors on the proposed rule. Our engagement focused on our Top 40. To date all of our Top 40 would be above the proposed threshold.	8/31/2020 12:03 PM
39	I'm not sure yet - we'll cross that bridge when we come to it. I think we'll have a lot of guesswork in terms of who we need to try to engage with.	8/31/2020 12:02 PM
40	Uncertain at this time.	8/31/2020 11:56 AM
41	Unsure	8/31/2020 11:55 AM
42	Not certain at this point.	8/31/2020 11:54 AM
43	More reliance on outside service providers.	8/31/2020 11:51 AM
44	We do not yet have a proposal, but we would surely need to do something.	8/31/2020 11:43 AM
45	undetermined at this time.	8/31/2020 11:43 AM
46	Unclear at this point.	8/31/2020 11:42 AM
47	Still developing	8/31/2020 11:41 AM
48	Will make it more likely that we continue to engage a stock watch firm.	8/31/2020 11:39 AM
49	Greater cost of stock monitoring	8/31/2020 11:38 AM
50	expanded use of intelligence firm, perhaps using a different (more expensive but more comprehensive) one	8/31/2020 11:37 AM
51	none - already do significant engagement	8/31/2020 11:36 AM
52	n/a	8/31/2020 11:35 AM