



John J. Stewart, CFA
Senior Vice President
Investor Relations
Digital Realty
Four Embarcadero Center, Suite 3200
San Francisco, CA 94111 USA
Tel: +1 415 738 6500 Fax: +1 415 738 6501
www.digitalrealty.com

September 29, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

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

Dear Ms. Countryman:

I'm writing on behalf of Digital Realty (NYSE: DLR), a global data center provider and real estate investment trust (REIT). As a public company since 2004 with a \$40 billion market capitalization, what our company needs in order to best meet our obligations to our shareholders is more market transparency—not less. That is why we forcefully oppose the Commission's proposed amendment to the Form 13F reporting rules for institutional investment managers. Simply put, the current proposal is not the modernization we need; in fact, it's the opposite of the reform we've been supporting for years.

As a large-cap company, we estimate that the proposed \$3.5 billion threshold would allow 59% of our current 13F filers to evade disclosure.¹ This change, if enacted, would significantly undermine Digital Realty's understanding of our investors, and how we interact with them. Specifically, it would hinder our existing engagement with shareholders, which helps to keep us informed as to the issues our shareholders care about and enable us to maintain constructive dialogue with those investors and with the broader marketplace. The amendment would also impede our ability to attract new long-term investors² and deprive us of timely information about activist hedge funds. These effects would be particularly unwelcome during a period of economic uncertainty when short sellers and activist hedge funds have the potential to unfairly take advantage of companies with otherwise solid performance track records and strong fundamentals.

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- 1) We understand that the effects of the proposed amendments would be even more pronounced for small and mid-cap companies. Make no mistake, the impact on large-cap companies will be significant.
 - 2) Under the current rules, we can safely say that any investor that is not required to file under 13F is too small to take on a large long-term position, but if the proposed changes are enacted, we will no longer be able to say that with any confidence. This would put small long-only mutual and hedge fund managers at a serious disadvantage.

13F data is the only tool available to public companies that shows us which investors are buying or selling shares each quarter. Schedule 13D and 13G reports are not a sufficient alternative because reliance on these reports alone would leave us blind to most ownership changes, given that only four of our shareholders own five percent or more of Digital Realty stock. It would also leave us blind to certain investors who refuse to disclose their stakes—even activists who have raised questions about the company, requested meetings with our management, and/or launched an activist campaign. While it is true that activists falling below the proposed threshold would be inherently less impactful in terms of their ownership stake, it's equally true that those activists would have the ability to make noise and manipulate share price behind a veil of secrecy, putting companies at even greater risk of ambush activism by short-term-oriented fund managers.

To be clear, Digital Realty welcomes the views of all shareholders and is not seeking any protections from activist approaches. In fact, quite the contrary – in order to be able to engage with shareholders potentially seeking change, we must be able to know that they own our shares. Our goal is to communicate with our holders as much as we can, and to be as transparent with them as we can. We know that the SEC, with your mandate to protect investors and ensure good disclosure from public companies, shares this goal, as do advocates of good corporate governance.

Rather than raising the threshold and reducing transparency, the reform we need is more robust short sale disclosures and timelier disclosures. Specifically, we urge the Commission to require 13F filers to disclose short and derivative positions, shorten the antiquated 45-day reporting period, and support legislation to provide for monthly disclosure. These reforms would not only fortify public companies' ability to effectively engage with shareholders, but also give small retail investors visibility when sophisticated investors are actively betting against a stock. These reforms are long overdue, as it's now been a decade since Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 rightfully called for monthly disclosure of short positions.

An example from the not-too-distant past shows the impact that a single investor can have on the market, and why real reform is needed to bolster—not diminish—13F disclosures. In 2013, our stock was trading at \$69 per share when an activist short seller told investors at a conference that Digital Realty was a “melting ice cube” and our shares were only worth \$20 per share because our “dividend [was] not sustainable” and our “fundamentals [were] deteriorating.” These comments followed a period when the short seller had been engaging with our investor relations team under false pretenses and, unbeknownst to us, accruing a short position. For a time, the comments had a significant downward impact on our share price, which dropped by more than 20% over the next year.



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Ultimately, the junior analyst who spearheaded the short seller’s campaign departed and the hedge fund dissolved. Today—despite the short seller’s grim predictions based on mischaracterizations and inaccurate conclusions—Digital Realty shares are trading at over \$140 per share.

For the reasons stated above and in light of the concerns expressed by countless individual shareholders and public companies that help fuel our economy, we urge the Commission to withdraw its proposed 13F amendments. Instead, we respectfully encourage the Commission to adopt the reforms detailed in the rulemaking petitions submitted by the National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance, and Nasdaq.³

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Stewart".

John J. Stewart
Senior Vice President, Investor Relations

3) See NYSE Group, NIRI, and Society for Corporate Governance, Request for Rulemaking Concerning Amendment of Beneficial Ownership Reporting Rules Under Section 13(f) of the Securities Exchange Act of 1934 in Order to Shorten the Reporting Deadline under Paragraph (a)(1) of Rule 13f-1, Petition No. 4-659, February 4, 2013, available at: <https://www.sec.gov/rules/petitions/2013/petn4-659.pdf>; NYSE Group and NIRI, Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934, Petition No. 4-689, October 7, 2015, available at: <https://www.sec.gov/rules/petitions/2015/petn4-689.pdf>; and Nasdaq, Petition for Rulemaking to Require Disclosure of Short Positions in Parity with Required Disclosure of Long Positions, Petition No. 4-691, December 7, 2015, available at <https://www.sec.gov/rules/petitions/2015/petn4-691.pdf>.