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September 25, 2020

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

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

Dear Ms. Countryman,

The Security Traders Association (“STA”) appreciates the opportunity to provide comments in response to the Securities and Exchange Commission’s (“SEC” or the “Commission”) Proposed Rule on Reporting Threshold for Institutional Investment Managers (“Proposal”). STA is an organization comprised of individuals who are involved in the trading of financial securities in the U.S and Canada (“CSTA”). Our members represent companies with many of the business models in the financial services sector including, but not limited to, retail brokerage firms, agency only broker dealers, asset owners and managers, and liquidity providers.

STA’s remarks are focused primarily on the Commission’s Proposal to raise the reporting thresholds and the potential negative implications of the Proposal, including the impact on the secondary trading of thinly traded securities.¹

Background

In 1978, the Commission implemented the reporting requirement of Section 13(f) by adopting rule 13f-1 and Form 13F. The proposal explains the Commission “attempted to structure the form in a manner that would provide useful data regarding holdings that could impact the markets, while minimizing the form’s reporting burdens.”

Proposed Rule Summary

The Commission is proposing the following three substantive changes:²

¹ See Securities and Exchange Commission Statement on Market Structure Innovation for Thinly Traded Securities, Securities Exchange Act Release No. 87327 (October 17, 2019), available at <https://www.sec.gov/rules/policy/2019/34-87327.pdf> (the “Commission Statement”).

² 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>. [hereinafter Reporting Threshold Proposal].

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- Proposal to increase the current reporting threshold for Form 13F reports by institutional investment managers from \$100 million in assets under management (“AUM”) to \$3.5 billion AUM.
- Proposal to increase the information provided by institutional investment managers by eliminating the omission threshold for Form 13F.³
- Proposal to amend the instructions related to confidential treatment requests on Form 13F in light of the U.S. Supreme Court’s recent decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019).

Summary of Recommendation

Shareholder information from Form 13F Filings is required for the efficient trading of securities and useful in the investment decisions by self-directed retail investors. The Proposal would eliminate the public visibility of large amounts of shareholder information that will lead to a loss of liquidity in the secondary markets and result in harm for companies and their shareholders. This outcome would be more severely felt in thinly traded securities given their inherent need for enhanced liquidity provision by broker dealers.

STA acknowledges that the current reporting threshold presents burdens on certain small investment managers, but given the importance of the information from Form 13F we recommend that the Commission exercise extreme caution in raising the reporting threshold. We believe a threshold which is materially lower than the proposed \$3.5 billion AUM will more effectively balance the interests of small investment managers; issuers and the investors they serve.

Reporting Burden for Investment Advisors

Centralized Book of Records

Some small managers do not utilize a centralized book of record, resulting in manual workflow for filling out a Form 13F. For those managers who also offer a Separately Managed Accounts (“SMA”) service, the burden is meaningful because it requires the investment manager to pull holdings information from multiple custodians of those investors whom they manage assets for. This workflow of centralizing books of records, necessary in filing a Form 13F, is a manual

³ Form 13F currently allows a reporting institutional investment manager to omit from its Form 13F otherwise reportable holdings of Section 13(f) securities if, on the period end date, it holds “fewer than 10,000 shares (or less than \$200,000 principal amount in the case of convertible debt securities) and less than \$200,000 aggregate fair market value (and option holdings to purchase only such amounts). See Form 13F Instructions, Special Instruction 10, available at <https://www.sec.gov/about/forms/form13f.pdf>.

process for small managers who may not possess the resources to pay a vendor to produce an accurate Form 13F report.

Burden of Paperwork

Today there is less handling of physical paper, however, firms still have to create reports, which includes procuring, amalgamating, and reporting the data. Firms are further required to store the back-up information, obtain confirmation of filing, and retain all of the records.

Thinly Traded Securities

Correlation between Thinly Traded Securities; Their Investors and Broker Dealers

Consolidation among the asset management and broker dealer industries have led to fewer, but much larger players in the marketplace. Achieving profitability for large asset managers requires sizable investments in issues with meaningful markets capitalizations. For large broker dealers, profitability is mainly achieved through large transactions with large asset managers and companies. Therefore, as it pertains to thinly traded securities, it is predominately small to mid-size investment managers who invest in them and small to mid-size broker dealers who provide execution and investment services.

In addition to small to mid-size investment managers, other shareholders in thinly traded securities are individual investors who engage the market through a self-directed vehicle. STA acknowledges certain benefits accrue to investors when they engage the market in a self-directed vehicle with information from Form 13F filings. In our letter to the Commission dated March 26, 2013 we define “self-directed vehicle” as a product used by an investor who chooses to make their own investment decision absent any advisor and executes that investment directly without the use of an advisor or manager.⁴ An individual investor who chooses to use such vehicles may determine there is a benefit in knowing that professional managers with robust research and investment models are shareholders in a company in which the individual investor seeks to invest in. This information therefore contributes to overall confidence and is a contributing factor in the investment and liquidation decisions for these individual investors.

There is a strong correlation between thinly traded securities, their investors, and the broker dealers who service them. Therefore, in order to maintain a robust ecosystem for thinly traded

⁴ See STA Comment Letter re NYSE Petition for Rulemaking under Section 13(f) of the Securities Exchange Act of 1934; File No. 4-659, available at <https://securitytraders.org/wp-content/uploads/CommentLetterShortening13Ffilings.pdf>.

securities, rulemaking which addresses one segment of these participants needs to also take into consideration the impact to the other two.

Enhanced Liquidity

STA believes that small to mid-size broker dealers play a critical role in the quality of the secondary markets of thinly traded securities because, unlike exchanges, they are able to provide enhanced liquidity to investors. Enhanced liquidity is liquidity that exceeds what is publicly displayed and available in the marketplace. Enhanced liquidity could be the result of capital commitment, secondary offerings, or institutional block trades. Information found in Form 13F filings play a meaningful role in decisions which foster the creation of enhanced liquidity. Broker dealers will be less inclined to commit capital absent accurate information on shareholders who could be on the “other side” of the transaction that the broker dealer is being asked to commit capital on.

Institutional Block Trading & Third-Party Vendors

Even in situations where the broker dealer is acting in an agency capacity, institutional block trading would be impeded absent shareholder information from investment advisors. Absent the Form 13F reporting information, broker dealers facilitating orders would need to acquire this information elsewhere, such as from a third-party vendor. Besides broker dealers incurring a new and additional cost, it is highly likely that the information would be inferior to what is currently available due to regulatory requirement for investment managers to report such information no longer existing.

Regulatory Industry Standards

STA believes benefits can accrue to individual investors when regulators, with industry input, define industry standards in appropriate areas. Defined regulatory industry standards ensure information is accurate and uniformly available. In addition, such standards foster private market solutions which transcend to lower costs. Information found in Form 13F is an example of a regulatory industry standard which produces information that is accurate and uniformly available with low cost burdens. The Proposal goes against this principle because by eliminating the reporting requirement for investment advisors with under \$3.5 billion AUM, the breadth of required information will decrease; become more expensive to replace; and be less standardized.

Achieving Regulatory Efficiency

The U.S. securities markets are the most efficient and liquid in the world. In order to maintain these standards, participants, including regulators, must operate efficiently by maximizing available technological and human resources.

As stated in the Proposal, 5,089 investment managers exceed the \$100 million filing threshold for Form 13F holding reports. This is approximately 17 times the number of filers that the threshold covered in 1975. STA does not dispute that burdens to the Commission involving inquiries on Form 13F from small investment managers exist. However, we believe the solution described in the Proposal does not strike a proper balance of satisfying the interests of all market participants. STA believes a more effective solution is a combination of a reporting threshold which is materially lower than the proposed \$3.5 billion and additional details from the Commission on the types of inquiries it receives which the industry could opine on with the goal of finding solutions.

Rules that Provide Benefits Verses those that Provide Protections

STA recognizes that there is a distinction between rules which provide investors a benefit verses rules which provide investors protection. Such situations are usually the result of a rule that once served an investor protection issue, which over time no longer exists due to changes in the regulatory or competitive forces within the marketplace. We believe the current reporting regime involving Form 13F is one such example.

Originally approved in 1975, STA acknowledges the intent of Form 13F is to provide a reporting and disclosure system to benefit the enforcement of orderly markets by the Commission and provide the public with information on holdings of institutional investment managers who exercise investment discretion over certain accounts of equity securities described in Section 13(d)(1) of the Exchange.⁵ Another important purpose of the rule is to provide investors and issuers useful information to track “institutional investor holdings in their investments.”⁶ The Proposal deviates from the value of efficient dissemination of this important information provides by Form 13F. As the Commission has previously stated, “these reports should have the same degree of availability as other filings with the Commission.” Investors and the public benefit from information on the investment opinions of large shareholders, including insiders, who by their nature are generally more sophisticated and informed.

⁵ See Securities and Exchange Commission, Form 13F, Information Required of Institutional Investment Managers Pursuant to Section 13(F) Of The Securities Exchange Act of 1934 and Rules Thereunder, available at <https://www.sec.gov/pdf/form13f.pdf>.

⁶ *Id.*

While STA believes that the original investor protection elements of Form 13F has diminished over time, we believe that information from Form 13F filings provide meaningful benefits to investors.

Costs Associated with Front Running

The Proposal states the higher reporting threshold will provide protection from costs associated with other market participants who “engage in behavior that is damaging to the manager and the beneficial owners of the managed portfolio, such as front running (which primarily harms the beneficial owners).” STA views this as overstated. We believe that the existing reporting timeline of 45 days provides adequate protection because it renders the information found in Form 13F useless for facilitating behavior which the Commission describes as “front running.”

Future Calculations

The Commission seeks input on approaches to adjusting future reporting thresholds. STA recommends the Commission use a consumer price inflation calculation which produces the lowest reporting threshold, which is the Personal Consumption Expenditures Price Index (“PCE”) inflation standard through 2018. According to the Proposal that calculation would result in a threshold of \$358 million.

Recommendation

STA recommends that the reporting threshold for Form 13F filings be raised to \$375 million AUM. This amount represents a rounding up of the PCE inflation standard. According to the Proposal, a \$375 million reporting threshold would result in the loss of publicly available shareholder information on roughly 1.9% of all reportable assets, but would provide a reporting relief to roughly 2,901, or 57%, of investment managers.⁷

Conclusion

STA appreciates the opportunity to comment on the Proposal and urges the Commission to consider the need for transparency of holdings for investors when evaluating changing the current Form 13F reporting threshold. The investment process is based on a number of variables such as the fundamental valuation of a company, its competitive landscape, management, and price. The information provided in Form 13F is one significant variable that is beneficial in

⁷ See Reporting Threshold Proposal at 16 and 17.

providing transparency in the investment process and plays a critical role in the trading and availability of liquidity in securities, in particular those which are thinly traded securities.

STA also wishes to express appreciation to the Commission Staff responsible for drafting the Proposal and providing data extremely useful in helping the industry formulate opinions and input.

Sincerely Yours,



Chris Halverson
Chairman of the Board



James Toes
President & CEO

cc: Chairman Jay Clayton
Commissioner Caroline A. Crenshaw
Commissioner Allison H. Lee
Commissioner Hester M. Pierce
Commissioner Elad L. Roisman