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September 29, 2020

Ms. Vanessa Countryman
Secretary
U.S. 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:

Fintuitive is a financial research and data analytics company that helps corporate investor relations professionals with: (i) understanding their shareholder base, (ii) facilitating better conversations with institutional investors, and (iii) targeting institutional investors whose investment strategies are aligned well with the issuer's securities.

We are writing to express our strong opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

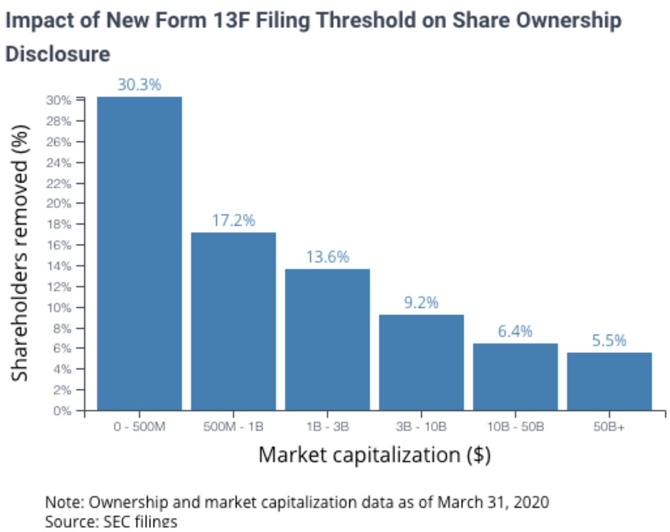
The SEC's proposed Form 13F threshold will result in significant information loss for investors and issuers

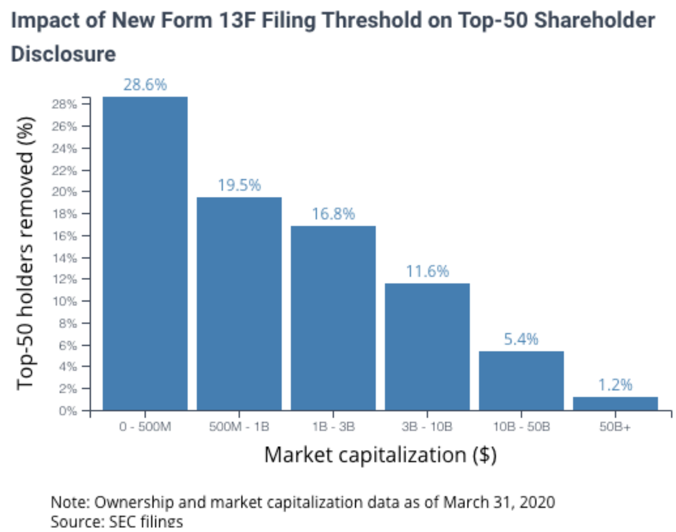
The SEC adopted Form 13F in 1978 to gauge the impact of large institutional money managers on the securities markets. However, as with many business and regulatory decisions, there are often secondary and tertiary effects and uses that may not become evident until much later.

In the case of Form 13Fs, the filings have long come to be used by corporate equity issuers to understand their investor bases and for investor targeting. A data-driven process for matching of investors and issuers is critical in ensuring efficiency in capital formation and allocation. Data from Form 13F filings allow issuers and intermediaries to optimize their targeting processes rather than flying blind.

The proposed increase in Form 13F filing threshold from $100 million to $3.5 billion will significantly reduce valuable data and increase friction in these capital formation processes. The expected benefits, if any, are of dubious value.

The SEC's primary argument is that the information loss will be minimal. Our analysis indicates that this is not the case[1]. For example, according to our analysis of 5,262 Form 13F filings for the period ending March 31, 2020, publicly traded companies with market capitalization less than $500 million will lose visibility into 30% of their current shareholders. When only top-50 shareholders are considered, 29% of the top-50 shareholders are lost. Data for different market capitalization buckets is provided charts below.





Ironically, the impact of the new threshold will be felt disproportionately by small-cap and mid-cap issuers, precisely the areas where capital markets are less efficient and information more scarce. The difference between small and large corporate issuers is even more stark when considering information on top-50 shareholders. The information loss is further compounded when you consider that companies are not only losing information on their own shareholders/investors, but also investors in their industries and peer companies. In reducing the burden on managers with billions of dollars under management, the SEC will effectively impose a different kind of burden on smaller corporate equities issuers.

1. SEC's Proposed Form 13F Threshold Is Misguided, August 11, 2020, available at: https://www.fintuitive.com/insights/impact-of-sec-form-13f-filing-threshold-on-shareholders-and-ownership

Newer filing requirements will not compensate for information loss in Form 13Fs

The SEC then argues that newer reporting requirements such as N-PORT provide additional data that might compensate for data lost with a higher Form 13F reporting threshold. However, many of the funds getting relief under the higher Form 13F reporting threshold are not required to file N-PORTs. Therefore, the idea that N-PORTs might compensate for information lost due to a higher threshold for 13Fs is misguided.

A list of select Form 13F filers that would be relieved from filing under the new threshold AND are also not N-PORT filers is given below. The list includes well-established names and hardly the ones that would come to mind deserving of relief from incurring the relatively minor expense of a relatively uncomplicated quarterly filing.

Select Influential Fund Managers Below Proposed 13F Threshold

Fund	13F Assets ($bn)	N-Port Filer
Appaloosa	3.49	No
Starboard Value	3.30	No
Soros Fund Management	3.02	No
Paulson & Co.	2.72	No
Saba Capital Management	2.03	No
Tudor Investment	1.78	No
Taconic Capital Advisors	1.58	No
Jana Partners	0.93	No
Greenlight Capital	0.92	No

Note: Form 13F data for March 31, 2020
Source: SEC filings

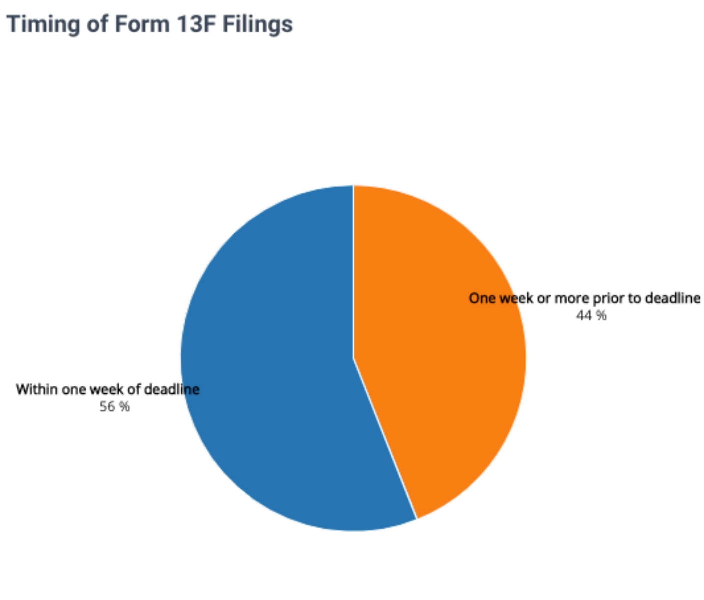
Neither front-running, nor copycatting appear to be valid issues

Finally, the SEC argues that smaller managers might face indirect costs from potential front-running and copycatting. This argument does not stand up to scrutiny either.

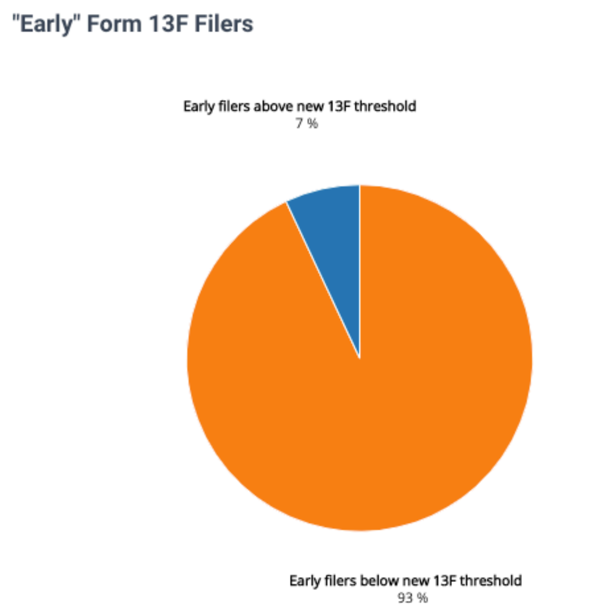
The deadline for filing Form 13Fs is 45 days from the end of the quarter. It is hard to imagine any kind of front-running that might be possible with information that is between 45 and 135 days stale (for hypothetical trades executed at the beginning of the quarter or end of the quarter and reported 45 days after the end of the quarter).

Going past mere common-sense logic, we find that data are also contrary to the SEC's argument. A total of 5,262 final Form 13Fs (excluding 13F-NTs and filings later amended) were filed for the quarter ending March 31, 2020. Of these, 2,351 or 44% were filed at least one week prior to the regulatory deadline. If either front-running or copycatting were issues for these filers, one would have expected them to file on the last possible day. This is clearly not the case.

When we look further at the size of the reported portfolio, we see that of these 2,351 "early filers," 2,197 or 93% were managers that would get relief under the new threshold. Even if we accept that front-running or copycatting are valid issues for money managers, data show that it not considered an important issue by the very managers to whom relief is being given.



Note: Form 13F data as of March 31, 2020; excludes Form 13F-NT submissions
Source: SEC filings



Note: Form 13F data as of March 31, 2020; excludes Form 13F-NT submissions
Source: SEC filings

Besides, professional investment managers of active mutual funds also have quarterly portfolio reporting requirements. The problem of front-running and/or copycatting does not appear to have been to the detriment of either investors in these funds or their managers. And when portfolios of larger, more influential investment managers are available, why would front-runners or copycatters focus on managers that the SEC is basically labeling as irrelevant to the proper functioning of markets?

Smaller, active investors are as important to markets as larger, passive investors

Probably the most significant difference between when the SEC initially implemented the rule in 1975 and now is the prevalence of index investors or passive managers. Many of the largest money managers today (Blackrock, Vanguard, State Street, etc.) comprise mostly passive investing funds. If the SEC is looking for data that will help it in maintaining orderly markets, it cannot ignore active managers whose decisions are based on price and other investment characteristics rather than just membership in an index. Many of these active managers will fall below the SEC's proposed $3.5 billion threshold.

Conclusion

We consider the SEC's proposal ill-advised and encourage the SEC to reverse its proposal.

Fintuitive appreciates the opportunity to comment on the Commission’s Proposed Rule. We would be pleased to provide any further information or respond to any questions that the Commission or the staff may have.

Sincerely,

Rohit Sood
President