



September 29, 2020

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

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

Dear Ms. Countryman:

The undersigned individuals, who are the leadership of the National Investor Relations Institute (NIRI) Capital Area Chapter, are writing on behalf of the chapter, in opposition to the proposed amendment issued on July 10, 2020. We represent members who are investor relations officers at 13 publicly held companies headquartered in the Washington, DC area, including Maryland and Virginia. These companies, listed on the New York Stock Exchange and the NASDAQ Exchange, have a combined market capitalization of approximately \$340 billion. We also represent investor relations counselors who advise publicly held companies across the country.

We are strongly opposed to the proposed amendment to increase the reporting threshold of 13F filers. We are in agreement with the hundreds of individual investors, the large number of issuers, the major stock exchanges and the other organizations that have also submitted their comment letters in opposition to the proposed amendment. We concur with and endorse the key points made by NIRI's national headquarters in their comment letter that the proposed rule would reduce transparency, particularly with regard to "hedge fund activism, significantly undermine issuer-investor engagement, and deprive retail investors of information they use to make investment decisions."¹ We are also in agreement with Commissioner Allison Herren Lee's "Statement on the Proposal to Substantially Reduce 13F Reporting," dated July 10, 2020, that this proposal will drastically reduce the number of 13F filers, will reduce public access to market information, and will constrain financial transparency.

We have concerns in four areas of the proposed amendment: the size of the threshold increase, the cost/benefit justification, copycatting, and the authority to raise the reporting threshold. They are as follows:

¹ See the National Investor Relations Institute comment letter, *Re: Reporting Threshold for Institutional Investment Managers, Release No. 4-89290; File No. S7-08-20*, August 28, 2020, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7709057-222930.pdf>

Reporting Threshold Increase

We are concerned about the 35 times increase in the reporting threshold and how it was reached. From our reading of the proposed amendment, this increase is a significant departure from the methodology the SEC has used in the past, where the Consumer Price Index or other inflation metrics were used to adjust economic thresholds in other SEC rules, such as the Commission's inflation-based increase in the gross revenue cap for emerging growth companies,² the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,³ and the recently passed updates to the SEC's rules on shareholder resolutions.⁴

An additional concern we have with the proposed reporting threshold increase is the ability of micro-cap and small cap public companies to attract and compete for capital. Given the number of 13F filers that would be exempt under the proposed threshold, we do not see how this fits with the SEC's mission to facilitate capital formation, especially when micro-cap and small-cap companies will end up with much less information about prospective investors in trying to compete for and attract capital.

Cost/Benefit Justification

We are aware of the SEC's "sympathy" to ease regulatory burdens. Our concern in this regard is that sparing some investment managers from what we see as the minimal cost of 13F filings would significantly increase the burdens on public companies—especially smaller issuers, who will have more difficulty in determining who their holders are and how many shares they hold—and other investors. In addition, there is evidence, in particular in one comment letter from a firm that offers the software to investment managers, that the cost is only \$500 per year,⁵ which is significantly smaller than the amounts mentioned in the proposed amendment.

We further disagree with the projected savings in direct compliance costs outlined in the proposed amendment. Our members have spoken with many of their current active holders about their costs to prepare and file the quarterly Form 13F. All have indicated to them that their cost to do so is minimal and not much more than "pushing a button" to submit the filing. We are in agreement with Commissioner Allison Herren Lee's "Statement on the Proposal to Substantially Reduce 13F Reporting," dated July 10, 2020, that "*the approach to revising the burden estimate for Form 13F relies on assumptions that vastly overstate the complexity and resulting burden of the reporting requirement.*"

Copycatting

We are extremely skeptical of the argument that 13F filers are economically harmed by "copycat" trades by other investors. In most cases that our members have experienced, 13F filers financially benefit when retail investors or asset managers follow them into a company's stock and help further increase the price after the position has been built. We would point to those who follow Warren Buffet as a great example of this pattern. More important, we see copycatting as another example of market behavior, much like that of short selling.

² Inflation Adjustments and Other Technical Amendments Under Titles I and II of the JOBS Act, Release Nos. 33-10332; 34-80355; File No. S7-09-16 (March 31, 2017)

³ Accelerated Filer and Large Accelerated Filer Definitions, Release No. 34-88365; File No. S7-06-19 (March 12, 2020) (the SEC increased the threshold for exiting accelerated filer status by 20 percent from \$50 million to \$60 million, while the threshold for exiting large accelerated filer status increased by 12 percent from \$500 million to \$560 million).

⁴ Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, File No. S7-23-19.

⁵ See the Advisor Consultant Network, Inc. comment letter, *Re: Reporting Threshold for Institutional Investment Managers*, Release No. 4-89290; File No. S7-08-20, September 10, 2020, available at:

<https://www.sec.gov/comments/s7-08-20/s70820-7757531-223233.pdf>

Authority to Raise the Reporting Threshold

We agree with the argument of Commissioner Lee in her July 10, 2020 statement regarding whether the Commission has the statutory authority to increase the reporting threshold, and with the arguments made in the August 31, 2020 comment letter submitted by the New York City Bar Association with regard to the authority to raise the reporting threshold.⁶ We believe that the five points made in that letter further support Commissioner Lee's argument.

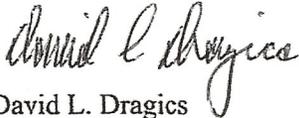
Our Members Overall Position on Section 13 of the Act

Given the evolutionary factors in the use of the Form 13F and events over the last 45 years, we believe the entire disclosure regime around Section 13 of the Act needs to be modernized to address the technological and financial innovations since the 1970s. For instance, the 45-day disclosure period following the end of a fiscal quarter, which is a relic of the days of paper recordkeeping, is no longer necessary since investment managers know their precise positions at the end of each trading day. In addition, the 13F rules should be updated to include short positions, derivatives, and a revision of the definition of "official securities." We believe that, rather than a proposed amendment to the 13F reporting threshold, it would make more sense to pursue with the U.S. Congress statutory and regulatory reforms to Section 13 of the Act, which would include more transparent reporting regarding forms 13D, F, and G as well as short positions, derivatives, and what an official security is. For all of the above reasons, we respectfully request that the SEC withdraw its proposed 13F amendment.

Sincerely,



David Dixon
President, NIRI Capital Area Chapter



David L. Dragics
NIRI Capital Area Chapter Advocacy Ambassador
Retired Senior Vice President, Investor Relations
CACI International Inc

Cc: Ted Allen, Vice President, Communications and Member Engagement, NIRI

⁶ See the Committee on Mergers, Acquisitions and Corporate Contests of the New York City Bar Association comment letter, *Re: Reporting Threshold for Institutional Investment Managers*, Release No. 4-89290; File No. S7-08-20, August 31, 2020, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7717206-222987.pdf>