



National Investor Relations Institute

225 Reinekers Lane, Suite 560, Alexandria, VA 22314
(703) 562-7700 FAX (703) 562-7701
Website: www.niri.org

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:

We the undersigned publicly traded companies and investor relations counseling firms join with the National Investor Relations Institute (NIRI) in opposing the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers. This supplemental letter includes additional issuers that were not part of an August 28 joint comment letter that NIRI submitted in opposition to this rulemaking.¹ Overall, 250 public companies, 28 counseling firms, and five other associations have joined with NIRI in expressing concerns about this proposal.

While we welcome the Commission's interest in modernizing 13F reporting, we believe that the proposed amendments would reduce transparency around hedge fund activism, significantly undermine issuer-investor engagement, and deprive retail investors of information they use to make investment decisions. We urge the Commission to withdraw this proposal and instead consider the common-sense reforms that were detailed in rulemaking petitions submitted by NIRI, the NYSE Group, the Society for Corporate Governance, and Nasdaq.² Rather than allow

¹ NIRI Joint Issuer Letter re Reporting Threshold for Institutional Investment Managers, August 28, 2020, available at: <https://www.sec.gov/comments/s7-08-20/s70820-7709057-222930.pdf>.

² See NYSE Group, NIRI, and the 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,

89 percent of current 13F filers to go dark, we urge the Commission to reduce the archaic 45-day reporting period, require 13F filers to disclose short positions, and support legislation to provide for monthly disclosure.³

Since the Commission's Form 13F rules were adopted more than 40 years ago, there has been a dramatic increase in engagement between institutional investors and the public companies with whom they invest. Investors have become more active in engaging with issuers on many important matters, including capital allocation decisions, long-term strategy, M&A, and ESG risks and opportunities. In response, companies have hired and/or engaged investor relations professionals to ensure that the concerns of investors are heard and conveyed to senior executives and directors.

One of the most important duties of these IR professionals is to respond promptly to requests from investors for calls or meetings with C-suite executives or directors for discussions about corporate strategy or proxy voting matters. At most companies, the volume of requests far exceeds the scarce executive (or director) time available for such engagement, so IR professionals have to help decide which investors should have priority. To make these determinations, most U.S. issuers rely heavily on the quarterly ownership information in 13F filings, the only accurate source available.⁴

The Commission's proposed amendments would seriously jeopardize the robust engagement by U.S. companies by excluding more than 4,500 investment managers from disclosure. These managers include a number of well-known hedge fund executives and billionaire investors who fall under the proposed \$3.5 billion threshold because they do not hold a significant volume of 13(f) securities on a long-term basis.⁵ While companies would continue to receive information from the largest investors, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For many companies, it is the 13F data from the

December 7, 2015, available at <https://www.sec.gov/rules/petitions/2015/petn4-691.pdf>.

³ Congress has expressed a clear intent for 13F filers to provide more disclosure. Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 called for monthly disclosure of short positions, while Section 951 mandated annual disclosure of proxy votes on executive compensation.

⁴ Unfortunately, companies cannot always accept investors' representations at face value. In a 2018 survey of NIRI members, 45.5 percent of respondents said they definitely had experiences with investors who misrepresented their positions to obtain meetings with C-suite executives, while another 40.5 percent said they suspected that had happened.

⁵ See, e.g., Bloomberg News (Quint), "Tepper, Einhorn, Soros Stock Holdings Would Go Dark in SEC Plan," July 15, 2020, available at <https://www.bloombergquint.com/markets/tepper-einhorn-soros-stock-holdings-would-go-dark-in-sec-plan>.

more active investment managers under the \$3.5 billion threshold that is more valuable.⁶ Small and mid-cap issuers, which typically have a greater percentage of these investors, would be especially hard hit by this loss of transparency. Without that 13F data, issuers may not realize that activist funds are plotting a proxy contest until one of those funds triggers the 13D disclosure threshold and surfaces with a 5 percent (or more) position.⁷

The Commission also has not fully considered the negative impact of raising the 13F threshold on retail investors and small asset managers, many of whom use 13F data when making investment decisions.⁸

For the foregoing reasons, we urge the Commission not to adopt a 35-times increase in the 13F threshold and instead implement the reforms proposed by NIRI and other organizations to improve market transparency and foster more effective issuer-investor engagement.

We also request that the Commission convene a public roundtable to hear the views of retail shareholders, institutional investors, and issuers on potential 13F reforms and other market transparency issues, including proposals to address “short and distort” abuses, the repeal of the OBO/NOBO rules, and the modernization of 13D reporting.⁹ We believe that such a roundtable would result in more thoughtful rulemaking proposals that would increase transparency, promote engagement, protect retail investors, and foster public company capital formation.

⁶ According to an IHS Markit analysis of the Russell 3000, an average company would lose visibility into 55 percent of its current 13F filers and 69 percent of the hedge funds on its 13F list. IHS Markit, “SEC’s 13F Proposal – Issuer and Investor Analysis,” August 7, 2020, available at: <https://ipreo.com/blog/secs-13f-proposal-issuer-and-investor-analysis/>.

⁷ The potential reduction in 13F transparency is especially concerning as market observers expect a post-pandemic surge in hedge fund activism, similar to what happened after the financial crisis of 2008-09. *See Barron’s*, “Hostile Bidders Are Ready to Pounce on Struggling Companies. They’re Waiting—for Now,” March 27, 2020, available at: <https://www.barrons.com/articles/hostile-bidders-are-ready-to-pounce-on-struggling-companies-theyre-waiting-for-now-51585326808>.

⁸ Retail shareholders have submitted hundreds of comments that oppose the SEC’s 13F proposal. Many investors review 13F data before making trading decisions, just as they monitor Form 4 data on stock trades by corporate insiders. When the Commission reduced the Form 4 reporting period to two business days in 2002, the SEC touted the benefits of greater ownership transparency: “Making this information available to all investors on a more timely basis should increase market transparency, which will likely enhance market efficiency and liquidity.” Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release Nos. 34-46421; 35-27563; File No. S7-31-02, August 29, 2002.

⁹ *See* Professors John C. Coffee, Jr. and Joshua Mitts *et al.*, Petition for Rulemaking on Short and Distort, Petition No. 4-758, February 12, 2020, available at: <https://www.sec.gov/rules/petitions/2020/petn4-758.pdf>; Shareholder Communications Coalition, Letter re SEC Proxy Voting Roundtable, File No. 4-681, April 1, 2015, available at: <https://www.sec.gov/comments/4-681/4681-9.pdf>; Wachtell, Lipton, Rosen & Katz, Petition for Rulemaking on Schedule 13D of the Securities and Exchange Act of 1934, Petition 4-624, March 7, 2011, available at: <https://www.sec.gov/rules/petitions/2011/petn4-624.pdf>.

Sincerely,

National Investor Relations Institute
Columbia Property Trust, Inc.
Cooper Companies
Empire State Realty Trust, Inc.
Fluor Corporation
Intellia Therapeutics, Inc.
Kimco Realty Corporation
Marcus & Millichap, Inc.
Murphy Oil Corporation
OneSpan Inc.
Preferred Apartment Communities, Inc.
Silicon Motion Technology Corporation
Sunrun Inc.
TrueBlue, Inc.

(Please see NIRI's August 28 joint letter for the names of 237 additional companies. That letter is available at: <https://www.sec.gov/comments/s7-08-20/s70820-7709057-222930.pdf>.)

Counseling Firms

Alpha IR Group
Canale Communications Inc.
ICR