



5151 Corporate Drive  
Troy, Michigan 48098-2639  
Phone: (248) 312-2000  
www.flagstar.com

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:

On behalf of Flagstar Bancorp, Inc. (NYSE: FBC), a savings and loan holding company headquartered in Troy, MI, we appreciate the opportunity to comment on the SEC's proposed amendments to the reporting threshold for 13F reports by institutional investment managers (the "Proposal"). We believe that is crucial to preserve the ability for issuers and investors to maintain access to the many benefits that 13F reporting provides and, in principle, support the intent to update and modernize the requirements. However, we believe the proposal is narrowly focused and one-sided, at the expense of small and mid-cap issuers in particular, and limits transparency and the ability to connect with investors. As a result, we are writing to express our strong opposition to the Proposal.

We believe the Proposal, which would eliminate approximately 89 percent of 13F filings, would result in a significant loss of market transparency to our company and other publicly traded companies in the United States. If enacted, it would impair our ability to identify and engage with existing shareholders, impede our ability to attract new long-term investors, and deprive us of timely information about activist investors.

The 13F filings are the only accurate source of ownership information available to our company as well as other U.S. issuers. While 13F data is not as timely as it could be, it is the only data that we have that shows which "street name" investors are buying or selling our shares each quarter. The Proposal would cause us and other publicly traded companies to need to hire stock surveillance firms who would undoubtedly have to find other, higher cost mechanisms to identify investors since they would not be able to obtain sufficient data from 13F reporting.

We do not believe that the Commission has adequately considered the potential impact of this 13F proposal to our company, and the many other small and mid-cap companies, and our obligation to regularly confer with our investors throughout the year. As a company with a \$1.6

billion market capitalization, we are particularly concerned about how the reduction of 13F transparency would impair our ability to identify our most active shareholders and engage effectively with them. We estimate that the proposed increase in the 13F threshold to \$3.5 billion would allow 26 of our current top 100 investors to evade disclosure. While some of our largest investors would continue to disclose shares held, 60 percent of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For our company and many others, it is the 13F data from the active investment managers and hedge funds under the proposed \$3.5 billion threshold that is more valuable.<sup>1</sup>

### **Reduced Engagement Due to Lack of Transparency**

Our company uses 13F data to allocate the limited time of our senior executives among the many requests that we receive from investors for one-on-one calls or meetings. We attempt to give priority to not only our largest investors and fund managers but also those shareholders with smaller positions who are interested in increasing their holdings in our company. With this proposed increase in the 13F threshold, we would not have visibility into this important group which would impose a severe limitation on our ability to engage our shareholders.

### **Negative Impact on Liquidity of Shares**

The loss of 13F data also would impede our company's ability to attract new long-term active institutional investors. This is particularly important for our company as our largest shareholder—formerly a majority shareholder—has executed multiple secondary offerings the past 24 months. Like many other issuers, we use the 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of our outreach efforts to prospective investors. This analysis has been critical for our company in identifying those targets that are best positioned to backfill the position our largest shareholder used to hold. Under the proposed threshold, the loss of transparency around who is holding as well as buying (and selling) our shares each quarter would hinder the ability of our company to target and compete for investors. As required by the agency's mission, the SEC should fully consider the impact proceeding with this rulemaking will have on companies with large shareholders that are actively divesting positions.

### **Increased Risk of Activism**

The Commission's proposal to significantly reduce 13F disclosures also is at odds with recent requests by the SEC that we and other public companies "provide as much information as is practicable" to investors amid the market uncertainty caused by the global COVID-19

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<sup>1</sup> According to Edelman's financial communications practice group, 60 percent of activist asset managers would fall under the \$3.5 billion threshold. See Jeremy Cohen and Jeff Zilka, Edelman, "SEC Proposed Rule Change Is A Step Backwards for Shareholder Democracy," July 29, 2020, available at: <https://finance.yahoo.com/news/sec-proposed-rule-change-step-193708183.html>.

pandemic.<sup>2</sup> Just as there is a need for greater transparency on our part to our investors, our need for ownership data is even greater during these uncertain times, when market volatility is high and many activist investors have taken advantage of share price declines to amass larger stakes in potential target companies. Under the proposed \$3.5 billion threshold, we would be unable to monitor those activist investors who would be exempt from reporting their positions, thus “gaming the system” and using the increased lack of transparency for their benefit and not that of our company’s long-term shareholders.

Without the 13F data we receive now, our company will not know if an activist fund manager that falls under the \$3.5 billion threshold is plotting a proxy contest until 10 days after the fund crosses the 13D disclosure threshold and publicly surfaces with a 5 percent (or often more) position.

### **Withdraw proposal and pursue other 13F reforms**

While we agree that SEC should modernize its ownership disclosure rules, we believe that the negative impacts of this 13F proposal on our company’s ability to engage effectively with our shareholders, attract new long-term investors, and detect potential activists would far outweigh the modest cost savings for investment managers. The proposed 35-fold increase in the 13F threshold is not consistent with the incremental approach the SEC has taken when adjusting economic thresholds in other rules, such as the Commission’s inflation-based increase in the gross revenue cap for emerging growth companies,<sup>3</sup> the adjustments to the transition thresholds for companies that exit accelerated filer status and large accelerated filer status,<sup>4</sup> and the proposed updates to SEC’s rules on shareholder resolutions.<sup>5</sup> Inflation during the time period of 1975 to 2020 would be less than a 5-fold increase.

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<sup>2</sup> As Chairman Jay Clayton and Corporation Finance Director William Hinman observed, “The SEC’s three-part mission -- maintain market integrity, facilitate capital formation, and protect investors -- takes on particular importance in times of economic uncertainty. Disclosure — providing the public with the information necessary to make informed investment decisions — is fundamental to furthering each aspect of our mission. . . . We urge companies to provide as much information as is practicable regarding their current financial and operating status, as well as their future operational and financial planning.” Chairman Jay Clayton and William Hinman, Director, Division of Corporation Finance, “The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19,” April 8, 2020.

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, File No: S7-23-19 (Nov. 5, 2019) (The Commission proposed to increase the minimum holding requirement for shareholder resolutions from

For the foregoing reasons, we request that the Commission withdraw its proposed 13F amendments and instead pursue the reforms detailed in the rulemaking petitions submitted by National Investor Relations Institute, the NYSE Group, the Society for Corporate Governance, and Nasdaq.<sup>6</sup> Rather than reduce 13F transparency, we urge the SEC to promote more timely and complete disclosure by supporting monthly reporting, requiring the public disclosure of short positions, and shortening the 45-day reporting period.

As mentioned previously, we appreciate the opportunity to comment on the Proposal. Please feel free to contact us should you have any questions.

Sincerely,

James K. Ciroli, Chief Financial Officer /s/

Bryan L. Marx, Chief Accounting Officer /s/

Kenneth Schellenberg, Vice President Investor Relations /s/

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\$2,000 to \$25,000, but would mitigate the impact of that change on small investors by allowing them to use the \$2,000 threshold if they continuously hold a company's shares for at least three years.)

<sup>6</sup> 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>.