



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 Horizon Therapeutics plc, a biopharmaceutical company focused on rare disease medicines, I am writing to express our opposition to the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.

The SEC's proposal, which would allow almost 90 percent of current 13F filers to "go dark," would result in a significant loss of market transparency to our company and other publicly traded companies in the United States. The proposed rule, if enacted, would impair engagement with shareholders, impede our ability to attract new long-term investors and deprive us of timely information about activist hedge funds that take positions in our stock.

The 13F filings are the only source of quarterly ownership information available to our company and other U.S. issuers. While 13F information 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. This information cannot be fully replaced by hiring stock surveillance firms, which themselves rely on quarterly 13F data as a starting point for their research efforts.

We are concerned as to whether the Commission has adequately considered the potential impact of this 13F proposal on corporate issuers and our obligation to regularly confer with investors throughout the year. 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 exclude approximately 18 percent of our current 13F filers from disclosure, including several of our top shareholders. 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.^{1 2}

¹ According to Edelman's financial communications practice group, 60 percent of activist asset managers would fall under the \$3.5 billion threshold. *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>.

² IHS Markit estimates that 86 percent of activist investors would no longer have to report their positions through 13F filings. 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/>.

Engagement

Our company uses 13F data in relation to engagement with our shareholders – in the proactive outreach we conduct with investors, in prioritizing the substantial number of investor requests for calls or meetings, and in the regular corporate governance outreach we conduct twice yearly with our top shareholders. Engagement is a cornerstone of our commitment to and relationship with the investors who own our company – and is an area that would be significantly affected by the 13F proposal, considerably limiting visibility into our shareholder base.

Capital Formation

The loss of 13F data also would impede our company’s ability to attract new long-term institutional investors. Like many other issuers, we use 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. The proposal is particularly concerning from our perspective as a biopharmaceutical company, given that the median assets under management for specialist healthcare providers is \$413 million³, which falls significantly below the SEC’s proposed \$3.5 billion threshold. Attracting new investors and measuring our effectiveness are essential for our company to effectively access the capital markets and grow our business. The 13F proposal would make these practices even more challenging.

Activism

The loss of 13F data under the proposed rule also exposes our company to a greater risk of “ambush activism” by short-term-oriented fund managers, who may demand that we eliminate jobs, reduce research funding, increase share buybacks or take other measures that may not be part of our long-term strategy, the investment strategy of our long-term investors or in the best interest of many of our shareholders. According to Activist Insight, 2019 was a record year for activism, as 470 U.S. companies were targeted and 95 proxy contests were launched.⁴ Many corporate advisers are warning companies to prepare for another surge in activism in 2021-22 after the pandemic subsides (as occurred after the financial crisis of 2008-09), so the timing of the SEC’s proposed reduction of 13F transparency would be especially unfortunate for public companies and long-term investors.⁵ Without the 13F data we receive now, our company would 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.

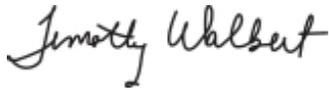
³ Analysis by Biotechnology Innovation Organization (BIO) of 13F filing data of more than 100 investors concentrated in the healthcare space, accumulated and sorted by WhaleWisdom (<https://whalewisdom.com>) and referenced in <https://www.sec.gov/comments/s7-08-20/s70820-7773212-223397.pdf>.

⁴ See Lisa Silverman, Bloomberg Law, "Insight: Preparing for Post-Pandemic Corporate Activism," May 4, 2020, available at: <https://news.bloomberglaw.com/corporate-governance/insight-preparing-for-post-pandemic-corporate-activism>.

⁵ See, for example, Q4 Blog, "Activism in the Post-Pandemic Market: What You Need to Know," May 12, 2020, available at: <https://q4blog.com/2020/05/12/activism-in-the-post-pandemic-market-what-you-need-to-know/>; Frank Aquila and Melissa Sawyer, Sullivan & Cromwell, *Corporate Secretary*, "How boards can prepare for post-pandemic activism," April 6, 2020; available at: <https://www.corporatesecretary.com/articles/boardroom/32040/how-boards-can-prepare-post-pandemic-activism>.

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 (NIRI), the NYSE Group, Nasdaq and the Society for Corporate Governance.⁶ Rather than reduce 13F transparency, we urge the SEC to promote more timely and complete disclosure by reducing the archaic 45-day reporting period and by requiring the public disclosure of short positions. We also encourage the SEC to convene a public roundtable on potential 13F reforms and other market transparency issues, including 13D modernization and deterring “short and distort” abuses.

Sincerely,



Timothy Walbert
Chairman, President and Chief Executive Officer

⁶ 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>.