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September 29, 2020

VIA Electronic Submission

OMB Desk Officer for the Securities and Exchange Commission
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Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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

Dear Ms. Countryman:

The Bank of New York Mellon ("BNY Mellon"), in its capacity as a depositary receipts bank, respectfully submits the following comments on the proposal for amendment to the Section 13(f) reporting rules of the Securities and Exchange Act of 1934 (the "Exchange Act") and the corresponding proposed changes to the reports filed on Form 13F. We support the opposition to the implementation of the proposed amendments expressed by the National Investor Relations Institute ("NIRI") in its letter to the Commission dated August 28, 2020[1], and while we appreciate the Commission's need to modernize reporting, we believe the focus of such modernization should be more frequent reporting and more extensive disclosure consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). The proposed increase in the reporting threshold for investment managers with assets under management to US$3.5 billion from the current US$100 million undermines the needs of both issuers and the investment community, particularly in terms of identifying an issuer's investor base for shareholder communications and proxy access.

As a leading provider of depositary receipt ("DR") services, with US$499 billion in DR assets under custody[2], BNY Mellon understands that transparency of ownership is a key challenge for publicly traded companies. Restricting Form 13F filing requirements to investors holding more than US$3.5 billion in eligible securities would have a negative impact on international issuers accessing the U.S. capital markets particularly in their efforts to identify and communicate with the broadest possible group of shareholders. Foreign private issuers look to the U.S. markets to diversify their shareholder base; U.S. investors in turn gain greater access to investment opportunities in the leading global companies that trade on U.S. exchanges.[3] Issuers also use timely and complete Form 13F filings to identify those investors who are likely to purchase their equity securities by comparing the holdings of peer securities disclosed in these investor's portfolios. The proposed increased Form 13F filing threshold would significantly reduce the quantity and quality of investor information publicly available and may be seen as a step backwards for issuers, U.S. investors, and from the stated intentions of Congress as expressed in Dodd-Frank.

1 https://www.sec.gov/comments/s7-08-20/s70820-7709057-222930.pdf

2 International Data Corporation as of June 30, 2020 (accessed July 17, 2020).

3 Issuers such as Toyota Motor and Royal Dutch Shell who appear on the Forbes 2000 list of the world's largest global companies. https://www.forbes.com/global2000/#6acb790e335d

3 BNY Mellon and other depositary banks, sponsored DR programs only, as of August 25, 2020.

4, 5, 6 Source: Data provided by IHS Markit, as of 8/20/2020.

There are currently 401 non-U.S. companies that are listed on U.S. exchanges using sponsored American depositary receipts ("ADRs").[4] As it stands, the reduced investor disclosure under the proposed amendments would affect these issuers significantly. As many as 83% of investors that currently disclose positions in ADRs via Form 13F would no longer be required to report. These investors represent 11.1% of depositary receipts holdings overall.[4] In addition, as proposed, opportunistic investors could build significant positions without detection by issuers or other investors, particularly since 91% of hedge funds would no longer required to report their ADR holdings.[5]

Finally, the amendments will further compound the lack of transparency for OTC-traded ("Level I") ADRs: as proposed, 72% of investors who report their positions in Level I ADRs would no longer need to report – representing 62.4% of the OTC DR Institutional Ownership, according to available data.[6] Companies issue securities on the U.S. markets in order to broaden access to investors who wish to participate in their growth. Correspondingly, U.S. institutional investors enjoy access to and connectivity with the companies in which they currently have an ownership stake. Any action that decreases the transparency of this relationship could impact the attractiveness of the U.S. markets for both international issuers and U.S. investors alike.

BNY Mellon appreciates the opportunity to comment on this proposal. Should you have any questions regarding these comments or if you would like to be connected directly with our international issuer clients on this matter, we would be happy to facilitate.

Kind regards,

Christopher M. Kearns