September 29, 2020

Via: rule-comments@sec.gov

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F St, NE
Washington, DC 20549

Re: Reporting Threshold for Institutional Investment Managers (File No. S7-08-20)

The Communications Workers of America ("CWA") and the American Federation of Teachers ("AFT") object to the Securities and Exchange Commission's proposal to raise the reporting threshold for institutional investment managers. CWA represents approximately 700,000 working people in telecommunications, customer service, media, airlines, health care, public service and education, and manufacturing. CWA members are both employees and investors. As employees, our members face coordinated attacks on their employers by activist hedge funds that eliminate good jobs through workforce reductions and outsourcing. As participants in pension funds, 401-Ks and individual retirement accounts, our members are invested in the broad stock market and are harmed when "hedge fund activism" undercuts long-term strategic investment by indexed companies.

The AFT is a union of 1.7 million members, including pre-K through 12th-grade teachers; paraprofessionals and other school-related personnel; higher education faculty and professional staff; federal, state and local government employees; and nurses and other healthcare professionals. AFT members participate in public-sector defined benefit pension plans totaling an estimated $3 trillion and in private, defined contribution retirement plans, both of which are broadly exposed to the stock market. The proposed rule could negatively impact our members by creating an imbalance between corporate knowledge of their investors and the public's knowledge, making many of the publicly-traded companies they invest with more vulnerable to pressure from "activist" hedge funds.

As advocates for workers and investors, we generally favor the flow of information to the public and market participants, and object to efforts to block information about institutional investors' holdings. The SEC's proposal to increase the threshold for reports filed by institutional investment managers from $100 million to $3.5 billion ("Form 13F") is contrary to the law and the Commission's mission to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets.[1] We urge you to withdraw the proposal.

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[1] See comment by Tyler Gellasch, Healthy Markets: "The 13F Proposal ignores the law, the legislative history, and the clear purpose for the law itself… The statute itself does not contemplate the Commission raising the reporting threshold beyond $100 million. However, the statute expressly contemplates lowering the reporting threshold, but then limits the Commission's authority to set the threshold below $10 million. Put simply, the statute establishes a range within which the threshold is to be set: $10-$100 million." Healthy Markets Comment on Reporting Threshold for Institutional Investment Managers, August 28, 2020.

As described in greater detail below, the actions of Elliot Management in its engagement with AT&T clearly demonstrate both the need for improving 13F requirements, and how the proposal would go in the opposite direction.

I. 13F Disclosures Are Already Inadequate and Raising The Threshold From $100 Million To $3.5 Billion Would Further Deny Investors and the Public With Information About The True Size And Structure Of Publicly Promoted Investment Theses.

The SEC's press release announcing the proposed amendments to update Form 13F states it "was adopted pursuant to a 1975 statutory directive designed to provide the Commission with data from larger managers about their investment activities and holdings, so that their influence and impact could be considered in maintaining fair and orderly securities markets."[2] The SEC's proposal to update the reporting threshold does not serve the statutory directive that motivated disclosure in the first place. Large managers have multiple ways of exerting control and influencing companies that are not captured under by Form 13F requirements. As discussed below, raising the threshold would reduce insight into already opaque markets, impeding the ability of the SEC and investment decision makers to consider the influence and impact or large managers.

In September 2019, Elliott Management announced an activist intervention in AT&T that claimed one of the largest and most successful companies in the United States could be improved by divesting assets, extracting cash through share repurchases, and reducing and outsourcing its workforce. Elliott publicly touted that it managed "funds that collectively beneficially own $3.2 billion of AT&T" to demonstrate its commitment to its plan at AT&T.

Elliott's press release announcing its economic interest in AT&T and subsequent coverage of the intervention in the financial press portrayed Elliott's interest in AT&T as a significant, value-oriented investment. For example, almost one year after Elliott announced the AT&T intervention, an article in *Forbes* inaccurately stated that "Elliott Management Corporation, which invested $3.2 billion into AT&T…"[3] In fact, nowhere in Elliott's letter to AT&T does it provide details on the structure of its investment in AT&T other than the topline $3.2 billion beneficial ownership stake.

A review of 13-F filings shows that at no point has the disclosed value of Elliott's interest in AT&T reached the topline $3.2 billion beneficial ownership it announced in September 2019. This suggests that Elliott designed its economic interest in AT&T using securities that are not required to be disclosed under rule 13F-1, such as short-interest and synthetic positions. With regard to securities that must be disclosed under rule 13F-1, Elliott's filings reveal that the structure of its economic interest in AT&T at different times comprised a combination of shares

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[2] "SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today's Equities Markets," U.S. Securities and Exchange Commission, July 10, 2020.

[3] Karen Robinson-Jacobs, "AT&T Reportedly Looking to Shed DirectTV After Persistent Subscriber Losses," August 28, 2020.

and call options or shares alone. The disclosed securities amounted to only about $900 million in underlying value at their height.

This disconnect demonstrates that the definition of Section 13(f) securities is facially inadequate and should be reformed. Significant equity interests are clearly not adequately being captured.

II. 13F Disclosures Provide Valuable Information That Would Be Lost By Raising the Threshold.

While the current 13-F picture is incomplete, it provides important insight. Investors and stakeholders who may have been swayed by Elliott's pitch on AT&T's future can arrive at the informed conclusion that Elliott lost faith in its own argument by analyzing its 13F disclosures.

<table>
<tr><th colspan="4">Elliott Management Corporation "Investment" In AT&T
Rhetoric versus Reality</th></tr>
<tr><th colspan="2">Rhetoric</th><th colspan="2">Reality</th></tr>
<tr><td rowspan="4">Elliott Management Corporation</td><td rowspan="4">Elliott claimed $3.2 billion beneficial ownership in AT&T for value-focused investment.</td><td>Elliott disclosed 3.125 million share investment worth approximately $118 million and equal to 0.04% of AT&T market capitalization.</td><td>Form 13F for period 2019-09-30</td></tr>
<tr><td>Elliott's disclosed shares increased to 5 million, plus additional $791 call option position bringing total disclosed interest to less than $1 billion.</td><td>Form 13F for period 2019-12-31</td></tr>
<tr><td>Elliott disclosed that it essentially halved option position to 10.5 million calls.</td><td>Form 13F for period 2020-03-31</td></tr>
<tr><td>Elliott disclosed 5 million share investment worth approximately $151 million and no options.</td><td>Form 13F for period 2020-06-30</td></tr>
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The information in these disclosures protects investors by revealing the dollar amount and partial structure of Elliott's investment. The declining value of its disclosed position may indicate Elliott's diminished confidence in its ability to unlock value by attacking AT&T. Elliott has not increased long-exposure since the quarter following its intervention, despite early claims that its agenda would result in a 65% share price increase by the end of 2021.[4]

Investors can use this information to evaluate whether Elliott's short-term, extractive approach to driving up the stock price is appropriate for a telecom giant that relies on large-scale capital investment for sustainable growth. The proposed change gives an unfair advantage to large investment fund managers like Elliott Management by denying other market participants information necessary to judge the merits of activist investors' publicly promoted investment theses and arrive at informed conclusions about their expected outcome.

III. Raising The 13F Reporting Threshold Would Not Help Facilitate Capital Formation.

Reports filed by institutional investment managers are a component of the mosaic of public information that the investing public can use to make decisions that are part of the capital formation process. Increasing the reporting threshold would take this information out of the hands of decision makers who must understand the merits of investment theses and potential impact of actions by other market participants.

In 2011, Commissioner Luis A. Aguilar told the Council of Institutional Investors that "Facilitating true capital formation is about helping investors and other capital providers to make informed decisions. Almost all investments have risks, and while we all understand the need for investors to take risks, I want them to take informed risks. Capital formation is about ensuring that the companies with the best ideas, even if those ideas are risky, can get the financing to make those ideas a reality."[5] As Elliott's intervention in AT&T demonstrates, access to information about the size and structure of institutional positions connected to activist campaigns allows other market participants to judge their merits and calibrate individual investments according to the expected likelihood of success. Evaluating investment ideas is a critical step in capital formation, and Forms 13F provide information that decision makers use to for insight into the actions of other market participants.

IV. Seeking To Change The Scope Of Investment Managers Subject To The Rule 13F Requirements Before Determining The Type And Timing Of Information Subject To Disclosure Is Unfair.

It is unfair and inappropriate to propose changes to the scope of managers required to file reports on Form 13F before considering other potential amendments to the Form. This approach focuses only on the types of managers subject to 13F disclosure rather than embarking on a broader

[4] "Elliott Management Sends Letter to Board Of Directors of AT&T," Elliott Management, September 9, 2019.

[5] Speech by SEC Commissioner: Facilitating Real Capital Formation by Commissioner Luis A. Aguilar, U.S. Securities and Exchange Commission Council of Institutional Investors Spring Meeting, Washington, D.C., April 4, 2011.

evaluation of the important issues of the type and timing of information subject to disclosure. In footnote 28 to the notice of proposed rulemaking, the SEC states "The Commission has also received petitions for rulemakings regarding other aspects of Form 13F." These proposals quite plainly went in the opposite direction of this proposal, and sought to enhance market efficiency by improving market transparency. They would have shortened the reporting deadline and expanded the types of investment activities subject to disclosure.

- In 2011, the NYSE Euronext, the Society of Corporate Secretaries and Governance Professionals, and the National Investor Relations Institute requested that the Commission review shortening the 45-day reporting deadline under rule 13F-1.[6]

- In 2015, the NYSE Group and the National Investor Relations Institute petitioned the SEC to require public disclosure of short sale activities under section 13F.[7]

Each of these requests would enhance market efficiency by providing investors with more timely and pertinent information about the actual size and structure of investment activities. By offering this anti-transparency proposal, the SEC is favoring the financial interests of a handful of large, activist investment managers over the majority of other market participants and the public. And yet it has offered no rationale for that choice other than what appear to numbers related to the purported costs of making disclosures that do not have a research basis. According to analysis by the Harvard Law School Forum on Corporate Governance, "The SEC asserted that the benefits of the proposed change include potential annual savings of approximately $15,000-$30,000 per 'smaller' manager, and reduction of indirect costs to "smaller" managers such as front running and copycatting… The SEC also noted that the academic literature supporting its views concerning indirect costs provide, at best, 'partial' evidence, and generally did not demonstrate harm to the reporting entities related to the front running and copycatting issues that the SEC suggested might be problematic."[8] At the same time, the SEC has offered no analysis on the costs to investors, issuers, or the public of the loss of the information.

IHS Markit's analysis of the SEC's proposed change shows that raising the reporting threshold to $3.5 billion would eliminate filing requirements for 86% of activist investors and preclude information about 83% of dollars dedicated to activist investments from disclosure. According to IHS Markit, "Activists tend to build concentrated positions and thus many could still build notable positions with less than $3.5B in EAUM. This threshold could apply to a few titans of the industry as many activists have only a small portion of their total portfolio in registered 13F positions."[9]

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[6] NYSE Euronext Petition for Rulemaking Under Section 13(f) of the Securities Exchange Act of 1934, February 1, 2013.

[7] NYSE, NIRI Petition for Rulemaking Pursuant to Sections 10 and 13(f) of the Securities Exchange Act of 1934, October 7, 2015.

[8] Adam Emmerich, David Silk, Sabastian Niles, "Going Dark: SEC Proposes Amendments to Form 13F," Harvard Law School Forum on Corporate Governance, July 19, 2020.

[9] Shannon McDermott, "SEC's 13F Proposal – Issuer and Investor Analysis," Ipreo IHS Markit, August 7, 2020.

According to an analysis by *Bloomberg News,*[10] some of the largest fund managers in the world would likely be excluded from having to report their holdings. This is diametrically opposed to the intent of the 13F filing requirement in the first place.

V. Conclusion

The Communications Workers of America and the American Federation of Teachers object to any change to the reporting threshold for institutional investment managers that reduces the ability of our organizations to evaluate activist hedge fund attacks on the companies that employ our members, and any change that reduces market transparency for our investor-members. Rather than pursue this misguided rule making, the SEC should return to previous proposals and determine what types of information protects investors, facilitates capital formation, and enhances fairness.

Sincerely,

/s/
Shane Larson
Senior Director for Government Affairs and Policy
The Communications Workers of America

/s/
Sarah Tammelleo
Assistant to the President and Director of Research and Strategic Initiatives
The American Federation of Teachers

[10] Hema Parmar, "Lots of Hedge Funds Could Keep Trades Secret Under SEC Plan," Bloomberg, July 10, 2020.