



September 29, 2020

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-0609

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

Dear Secretary Countryman,

The Advanced Medical Technology Association (“AdvaMed”) is pleased to provide comments on the Securities and Exchange Commission’s (SEC or the Commission) proposed amendments to the Form 13F reporting rules for institutional investment managers.

AdvaMed's member companies produce the innovations that are transforming health care through earlier disease detection, less invasive procedures and more effective treatments. AdvaMed has more than 400 member companies, ranging from the largest to the smallest medical technology innovators and manufacturers. AdvaMed advocates for a legal, regulatory and economic environment that advances global health care by assuring worldwide patient access to the benefits of medical technology. The association promotes policies that foster the highest ethical standards, rapid product approvals, appropriate reimbursement, and access to international markets.

For the reasons identified below, we oppose the Commission’s proposed amendments to increase the Form 13F reporting threshold by 35 times, from \$100 million to \$3.5 billion. We believe the proposal would dramatically reduce information available to the public about the identity of the institutional investors in a public company. This significant limitation on transparency is at odds with the Commission’s regulatory agenda in general and with how the Commission itself has explained access to information and its role in facilitating such access. As many respondents have noted already, this lack of transparency will be detrimental to Main Street investors and to the life science industry, in particular, as it relies heavily on these data to plan financing and investor targeting strategies.

Specifically, if enacted, the proposal would impair engagement with shareholders, prevent companies from obtaining timely information about activist hedge funds that take positions in their stock, and impede the ability of companies to attract new long-term investors.

#### **Impair Engagement with Shareholders**

Companies use 13F data to allocate the limited time of senior executives among the many requests that are received from investors for one-on-one calls or meetings. Clearly, companies cannot possibly say yes to every investor request to speak with senior management; therefore, the 13F data is used to give priority to not only the largest investors and fund managers with a

track record of activism, but also to those shareholders with smaller positions who are interested in increasing their holdings in a company.

By increasing the 13F reporting threshold from \$100 million to \$3.5 billion, the proposed amendments would exempt 89% of current 13F filers from the disclosure requirement – drastically limiting AdvaMed's member companies' visibility into their shareholder base. Besides Form 13F, shareholders are not required to identify themselves unless they cross the 5% beneficial owner reporting threshold applicable under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934. Public companies generally only have a few shareholders that are Section 13 filers.

Accordingly, with this proposed increase in the 13F threshold, companies would have poor visibility into their shareholder base, which would seriously undercut their vital shareholder outreach especially to important shareholders with smaller positions who are interested in increasing their holdings in a company.

### **Increased Risk of Activism**

The proposal to significantly reduce 13F disclosures conflicts with recent requests by the SEC that companies “provide as much information as is practicable” to investors amid the market uncertainty caused by the global COVID-19 pandemic. Along those lines, the 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.

In fact, it is not just the need for ownership data, but it is also the need to receive this data in a timely fashion that is arguably just as important; the requirement to file 45 days after quarter-end renders the information stale when filed and is an antiquated provision in the rule, considering how quickly markets move and transactions are completed today.

Under the proposed \$3.5 billion threshold, companies would be unable to monitor those activist investors who would be exempt from reporting their positions, which would include many well-known activists, thus “gaming the system” and using the increased lack of transparency for their benefit. The loss of 13F data under the proposed rule would expose companies to a greater risk of ambush activism by short-term-oriented fund managers, who may demand the elimination of jobs, reduction of research funding, increased share buybacks, or take other measures that may not be part of a long-term strategy that is in the best interest of employees and Main Street investors.

### **Negative Impact on Capital Formation**

The loss of 13F data also would impede a company's ability to attract new long-term institutional investors. Many companies use 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of outreach efforts to prospective investors. Both of these practices are essential for a company to effectively access the capital markets and to grow. Under the proposed threshold, the loss of transparency around who is holding as well as buying shares each quarter would hinder the ability of a company to continue to compete for and raise growth capital.

**Conclusion**

AdvaMed contends that the Commission should not raise the reporting threshold for 13F filings as this would erode existing corporate decision-making process in place for decades that are instrumental to planning and investor engagement. Raising the threshold to \$3.5 billion would eradicate the 13F reporting requirement for 70% of healthcare specialist investors who, given their focus in understanding healthcare sector peculiarities, are critical partners in the decades-long product planning process undertaken by public medical device companies. In addition, the requirement to file 13F filings 45 days after quarter-end renders the information stale when filed and is an antiquated provision in the rule. We are in support of shortening this filing period considering how quickly markets move and transactions are completed today. Ultimately, the proposal would severely limit access to information for public issuers and investors, which is the exact opposite direction of where the Commission should be headed.

Sincerely,



Pat Fogarty  
Vice President, Assistant General Counsel  
AdvaMed