September 4th, 2020

MACK-CALI®
Realty Corporation

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission ("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:

Mack-Cali Realty Corporation (NYSE:CLI) joins ICR LLC ("ICR") and the National Investor Relations Institute ("NIRI") in opposing the Commission's proposed amendments to the Form 13F reporting rules for institutional investment managers.[1]

While we endorse the concept of modernizing 13F reporting, we, like ICR and NIRI, believe that the proposed amendments would have negative consequences. Our views in that regard are set out below. As a path forward, we agree with ICR's and NIRI's suggestions that the Commission withdraw this proposal and re-propose amendments with the reforms described in rulemaking petitions submitted by NIRI, the NYSE Group, the Society for Corporate Governance, and Nasdaq.[2] More specifically, instead of permitting almost 90% of current 13F filers to stop filing and reducing transparency, the Commission should reduce the reporting period, require 13F filers to disclose short positions and support legislation to provide for more frequent disclosure.[3]

As proposed, the current reporting threshold would increase from $100 million to $3.5 billion. We believe that this change would have a dramatic and negative impact on public companies and the capital markets. To that end, we echo ICR's and NIRI's comments as set out in their letters to the Commission, dated August 25, 2020 and August 26, 2020[4] respectively, as well as

[1] https://www.sec.gov/rules/proposed/2020/34-89290.pdf (the "Proposal").
[2] 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.
[3] Congress has expressed a clear intent for 13F filers to provide more disclosure. Section 929X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 called for monthly disclosure of short positions, while Section 951 mandated annual disclosure of Say on Pay votes. We also believe that the Commission should eliminate the ability of beneficial owners of a company to prohibit their intermediaries from disclosing their identity to such company.
[4] See NIRI Letter to the SEC, and ICR's Letter to the SEC

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Commissioner Lee's comments in her statement regarding the proposal dated July 10, 2020.[5] In addition, we offer the following views regarding the proposal.

Significantly Reduces Access to Public Information and Market Transparency

If the proposed threshold is adopted, more than 4,500 institutional investment managers or 90% of current 13F filers – representing approximately $2.3 trillion in assets – will no longer be required to file Form 13F.[6] We understand that the proposed threshold is based on the growth of the U.S. equities market between 1975 and December 2018. While the Commission estimates that the increased threshold would retain disclosure for approximately 75% of the dollar value of the U.S. equities market, the transparency on that dollar value is greatly different now given the change in investment strategies since then, i.e., the rise in passive/index investing as compared to active investment strategies. Under the proposal, mostly index and passive investing will continue to be reported, which does not provide the same transparency as tracking active and activist investing. Further, the proposed threshold does not reflect the value of $100 million, adjusted for inflation, which would be near $500 million, according to the Bureau of Labor Statistics inflation calculator.

We believe that the proposal, if adopted, will significantly and detrimentally reduce information access and market transparency, which in turn will result in reduced investor confidence and capital market efficiencies (particularly for smaller capitalization companies), and further will provide a disincentive for privately owned companies to go public.

When Congress first adopted Section 13(f) in 1975, it did so to "stimulate a higher degree of confidence among all investors in the integrity of the U.S. securities markets."[7] However, the current proposal is antithetical to that legislative intent and will have the opposite effect on public companies and our capital markets, the efficiency of and the confidence in which is wholly dependent on information access and transparency.

Clouds Crowding Risk

The proposal will create a lack of clarity regarding crowding risk due to fewer hedge fund manager filings. Investors use 13F filings of top hedge fund managers to understand crowding risk and in turn to appropriately hedge their portfolios. Access to information regarding crowded positions help investors understand how similar their holdings are to the portfolios managed by institutional managers with similar investment styles/strategies. However, under the proposal, the absence of fewer numbers of 13F filings and filers will hinder the ability of investors to understand and assess crowding risks, resulting in obscurity and uncertainty for investors, issuers, and the capital markets.

Brokers Win, Investors Lose

Brokers, not investors, will emerge as winners in the more opaque market most certain to result from the proposal. After the implementation of MiFID II rules, traditional brokers began to lose relevance as investors started to invest in a more direct manner, thereby avoiding brokerage

[5] See https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10
[6] See https://ipreo.com/blog/secs-13f-proposal-issuer-and-investor-analysis/.
[7] See https://www.sec.gov/files/480.pdf citing Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 94-75 at 78 (1975), reprinted in 1975 U.S.C.C.A.N. 179, 261. See also Division of Investment Management: Frequently Asked Questions About Form 13F (May 2005)(Frequently Asked Questions), http://www.sec.gov/divsions /investment/13ffaq.htm, Question 1 at p.1 ("Congress believed that this institutional disclosure program would increase investor confidence in the integrity of the United States securities markets.").

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commissions. At the same time, investor relations officers started to focus their outreach and capital raising efforts on sponsored research firms/paid advocates, employees, dealers, vendors and others to actively and directly market their company to and raise capital from investors. However, if the proposal is adopted, companies that currently rely on 13F filings to seek marketing and capital growth insights and opportunities will again become largely dependent on brokers to close the information and engagement gap. In turn, we believe that this will lead to higher brokerage commissions and ultimately hinder the growth and efficiency of our capital markets.

More Expensive Access to More Limited Information for Companies

We believe that access to data will become more limited and more expensive if the proposal is adopted. The Commission stated that the new reporting threshold would retain data "on over 90% of the dollar value of the securities currently reported."[8] However, the information void that will be created by the proposal due to the lack of reporting by over 90% of the current 13F filers will mean that the cost of accessing that previously available information will increase, and those increased costs will ultimately be borne by the public companies seeking out that information and in turn borne by investors and the capital markets as a whole. For example, the cost to companies that utilize shareholder surveillance services in an effort to obtain timely and detailed data regarding the transaction activity of investment managers will increase, as these service providers currently rely on 13F filings to produce that data. Similarly, companies seeking to obtain a list of their registered shareholders and non-objecting beneficial owners (NOBO) will have more difficulty accessing this information due to more limited publicly available data that would result from the proposals and likely will need to pay more for that information as a result. [9]

Damages Investor Relations and Ultimately Capital Markets

Our investor relations team seeks to "know our customer," with the customer in this case being investors and other market participants. If companies do not understand their investors or worse are unable to ascertain who their investors are, companies will be unable to improve disclosures, and better communicate with and otherwise help their investors. Investors and other market participants want companies to provide them with more, and better, information, transparency and communications. Indeed, the efficiency of our capital markets depends on the timely public dissemination of accurate information about issuers and their securities, and the Commission has recently and historically called for more transparency with investors, particularly during times of market uncertainty. Companies will be unable to do that if they are unable to readily identify their investors and evaluate investor activity and behavior.[10] Companies certainly will be unable, or less able, to do that if the proposals are adopted. We believe this will not only negatively impact public companies but the capital markets as a whole, as described below.

Since the Commission's Form 13F rules were adopted more than 40 years ago, there has been a dramatic increase in engagement between institutional investors and the public companies in which they invest. Investors now engage more directly with issuers on many important matters, including capital allocation decisions, long-term strategy, mergers and acquisitions, and corporate governance. In response, companies have hired and/or engaged investor relations professionals to seek to ensure that the concerns of investors are heard and conveyed to senior executives and directors.

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[8] See https://www.sec.gov/news/press-release/2020-152
[9] See https://www.intro-act.com/#/fundamentals/Mjk=
[10] See https://www.intro-act.com/#/fundamentals/MzE=

One of the most important duties of our investor relations team is to respond promptly to requests from investors for calls or meetings with C-suite executives or directors. Most U.S. issuers rely heavily on the quarterly ownership information in 13F filings, the only accurate source available, to properly engage with investors. However, the Commission's proposed amendments would seriously jeopardize the robust investor relations engagement that has developed by excluding more than 4,500 investment managers from disclosure. These managers include hedge fund executives and billionaire investors who fall under the proposed $3.5 billion threshold because they do not hold a significant volume of 13(f) securities on a long-term basis.

While companies would continue to receive information from the largest investors, many of those institutions are passive, indexed holders with positions that do not change appreciably each quarter. For many companies, it is the 13F data from the more active investment managers under the $3.5 billion threshold that is more important. Small and mid-cap issuers, which typically have a greater percentage of these investors, would be especially hard hit by this loss of transparency. Without that 13F data, issuers may not realize that activist funds are plotting a proxy contest until one of those funds triggers the 13D disclosure threshold and surfaces with a 5 percent (or more) position. Additional discussion about these topics follows.

Harms Retail Investors

Retail investors often will place reliance on a company's 13F data when they make investment decisions. With the proposal, these investors will have far less information with which to make such decisions, and information that would remain available can be deceiving, particularly as it pertains to micro- and small-cap companies. For example, the 13F filings associated with a micro-cap company could make it appear to an investor that the company has no institutional ownership whatsoever, when that might not actually be the case. As one investor relations professional recently noted, a significant concern regarding the proposal is a potential degrading of investor trust in the micro/small cap markets. He pointed out that these issuers likely do not have a roster of large ($3.6B and up) institutional investment managers yet:

> Decreasing transparency for the smaller institutions significantly harms micro/small caps in their ability to know who's holding their stock, while giving the impression that they have no institutional following.[11]

In our view, more and more retail investors are seeking to access the capital markets without the assistance of an intermediary and further seek to invest in "start-ups", i.e., micro-cap and small cap companies.

Harms the Most Vulnerable Issuers and Investors

IHS Markit analyzed the 3000 largest companies in the United States to identify which issuers and investors would be most affected by the increase of the 13F threshold to $3.5 billion:

- In terms of issuers, IHS Markit found that micro-cap, small-cap and energy companies would be most severely affected by the resulting loss of information access, while mega-cap, large-cap and utilities companies would see the least impact.
- In terms of institutional managers/investors, IHS Markit found that the proposal would noticeably impact alternative/specialty and active/high turnover institutional investment

[11] See https://www.intro-act.com/#/fundamentals/MzE=

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managers in terms of relief from filing requirements, while index/low turnover managers would see little relief from their filing requirements. On average, 55% of the investors, and 69% of the hedge fund investors, on an issuer's shareholder list would no longer be the subject of 13F filings.

- Importantly, IHS Markit analyzed the impact on "activist" institutional investment managers and found that an incredible *86% of activist managers would no longer be required to file 13Fs.*[12] *Activists tend to build concentrated positions and thus many could still build notable positions with less than $3.5 billion. This could lead to an even greater rise in activist managers, leading to significant disruptions to the capital markets and to public companies.*[13] Additional discussion regarding activists follows.

Increases Activism Risks

Just as there is a need for greater transparency on the part of public companies with their investors, a company's need for ownership data is even greater during times of market volatility and uncertainty, when many activist investors seek to take advantage of share price declines to amass larger stakes in potential target companies. Under the proposed $3.5 billion threshold, public companies would be unable to monitor activist investors who would be exempt from reporting their positions, thus allowing them to "game the system" and use the increased lack of transparency for their benefit and to the detriment of the company's long-term shareholders.

The loss of 13F data under the proposed rule potentially exposes public companies to a greater risk of ambush activism by short-term-oriented fund managers, who may demand that the company eliminate jobs, reduce research funding, increase share buybacks, or take other measures that may not be part of the company's long-term strategy or the investment strategy of its long-term investors. According to Activist Insight, 2019 was a record year for activism as 470 U.S. companies were targeted and 97 proxy contests were launched.[14] Many corporate advisers are warning companies to prepare for another surge in activism in 2021-22 after the pandemic subsides (as there was after the financial crisis of 2008-09), so the timing of the Commission's proposed reduction of 13F transparency would be especially unfortunate for companies and long-term investors.

In sum, without the 13F data that is available now, companies will not know if an activist manager that falls under the $3.5 billion threshold is plotting a proxy contest until 10 days after the 13D disclosure threshold is crossed and publicly surfaces with a 5 percent (or often more) position. Further, unless and until the 13D requirements are updated to, among other things, include directors, activists can mask their holdings until it is too late for the company to defend itself.

Negatively Impacts Capital Formation and Markets

The loss of 13F data also would impede a company's ability to attract new long-term institutional investors. Like many other issuers, companies use 13F filings to identify potential shareholders (such as those who have invested in similar companies) and to measure the effectiveness of their outreach efforts to prospective investors. Both of these practices are essential for companies to effectively access the capital markets, communicate with potential investors and to grow their businesses. Under the proposed threshold, the loss of transparency regarding who is holding as well as buying a company's equity securities each quarter would hinder the company's ability to

[12] See https://ipreo.com/blog/secs-13f-proposal-issuer-and-investor-analysis

[13] See https://ipreo.com/blog/secs-13f-proposal-issuer-and-investor-analysis/

[14] See https://news.bloomberglaw.com/corporate-governance/insight-preparing-for-post-pandemic-corporate-activism

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continue to compete for and raise growth capital. As required by the agency's mission, the Commission should fully consider the impact on capital formation before proceeding with this rulemaking.

Unlikely Reduction in Cost Burden

We understand that the Commission aims to reduce the cost burden and provide relief to smaller managers who are currently subject to 13F reporting.[15] According to Commission estimates, the direct compliance costs per manager can range from $15,000 to $30,000 annually and the proposal can result in savings of $68 million to $136 million in addition to savings in indirect costs related to 13F users front-running or copying advisers' portfolios.[16] However, in our experience, the estimates appear to be quite high. Form 13F filings generally are an automated process for investment managers.[17] Accordingly, we echo Commissioner Lee's views regarding the cost analysis in the proposal.[18]

Lack of Regulatory Authority

We, like Commissioner Lee, question the Commission's authority to increase the reporting threshold. The statute itself provides no support for such an increase, and in fact appears to set a statutory reporting threshold of $100 million, while authorizing the Commission to lower it, not increase it. The proposing release does not address this, and simply concludes that the statute provides the Commission with the authority to increase the threshold. Further, in our view, any use of the exemptive authority in Section 13(f)(3) would be inconsistent with the limitation on the Commission's authority in Section 13(f)(1). In other words, the Commission would be using its exemptive authority to turn the statute on its head.

For the foregoing reasons, we urge the Commission not to adopt a 35-times increase in the 13F threshold and instead implement the reforms proposed by ICR, NIRI and other organizations to improve market transparency and foster more effective issuer-investor engagement.

Sincerely,

David J. Smetana
Chief Financial Officer
Mack-Cali Realty Corporation

[15] See Proposal.
[16] Id.
[17] See https://www.intro-act.com/#/fundamentals/Mjk=
[18] Seehttps://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-1

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