

July 15, 2020

SEC Proposes to Increase the Form 13F Reporting Threshold

Proposal Would Increase the Form 13F Reporting Threshold From \$100 Million to \$3.5 Billion and Make Other Rule and Form Amendments

On July 10, 2020, the Securities and Exchange Commission (the “SEC”) proposed to amend rule 13f-1 and Form 13F to (i) increase the reporting threshold for filing a Schedule 13F holding report from \$100 million to \$3.5 billion, (ii) eliminate the *de minimis* threshold for individual securities, (iii) require institutional investment manager filers to furnish additional identifying information and (iv) make certain technical amendments to Form 13F.¹

The SEC is not proposing any reporting requirements with respect to short positions, as it is authorized to do by Section 13(f)(2), which was added to the Securities Exchange Act of 1934, as amended (the “Exchange Act”), in 2010 by Section 929X(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Rule 13f-1 currently requires institutional investment managers to file quarterly holding reports on Form 13F if the accounts over which they exercise investment discretion hold an aggregate of more than \$100 million in “section 13(f) securities,” which generally include listed equity securities included on a list published by the SEC each quarter. The proposal states that the recommendation to increase the reporting threshold is based on the growth of the U.S. equities market from 1975, when Section 13(f) was adopted, to December 2018, and is “designed to reflect proportionally the same market value of U.S. equities that \$100 million represented in 1975.”²

The SEC states that its research indicates that there are currently 5,089 institutional investment managers filing Form 13F holding reports based on their exceeding the \$100 million threshold. The proposal states

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that raising the reporting threshold to \$3.5 billion “would retain disclosure of 90.8% of the dollar value of the Form 13F holdings data currently reported while relieving the reporting burdens from approximately 89.2% of all current filers.”³ Further, the proposal directs SEC staff to review the reporting threshold every five years to determine its appropriateness and recommend any additional adjustments in light of changes to the U.S. equities market.⁴

In connection with the proposed increase of the reporting threshold, the SEC also proposes to eliminate the *de minimis* threshold for disclosure of holdings of individual securities on Form 13F. Form 13F currently permits institutional investment managers to omit holdings of “fewer than 10,000 shares (or less than \$200,000 principal amount in the case of convertible debt securities) and less than \$200,000 aggregate fair market value.”⁵ The threshold was included by the SEC when the SEC initially adopted Form 13F “because it viewed aggregate holdings in these amounts as *de minimis* and, therefore, unlikely to have the potential to materially impact the market.”⁶ The SEC notes that any incremental cost increases associated with including holdings beneath the *de minimis* threshold would not be material or overly burdensome for larger institutional investment managers with sophisticated trading and reporting systems.⁷

In addition, the SEC proposes to require each Form 13F filer to provide additional numerical identifiers on its form in order to allow the SEC and investors to identify more easily its other regulatory filings and the interrelationships between institutional investment managers who share investment discretion over Section 13(f) securities.⁸

Lastly, the proposal includes certain technical amendments to Form 13F. To modernize the information reported on Form 13F, the SEC proposes to revise the presentation of the data table to take into account the use of eXtensible Markup Language format. The SEC also proposes to revise the instructions for confidential treatment requests to require investment managers to demonstrate that the relevant information is both customarily and actually kept private by the manager, and to show how the release of this information would cause harm to the manager.⁹

Comments on the proposal are due 60 days after it is published in the Federal Register.

In announcing the proposal, SEC Chairman Clayton stated that it “furthers the statutory goal of enabling the SEC to monitor holdings of larger investment managers while reducing unnecessary burdens on smaller managers.”¹⁰ However, SEC Commissioner Lee publicly stated that she is “unable to assess the wisdom of the proposal because it lacks a sufficient analysis of the costs and benefits.”¹¹ In dissenting from the proposal, Commissioner Lee highlighted three major areas of concern regarding the proposal:

- **Reducing Transparency.** The proposal would eliminate access to information about discretionary accounts managed by more than 4,500 institutional investment managers representing approximately \$2.3 trillion in assets;
- **Projected Savings.** The proposal’s purported cost savings are based largely upon new Paperwork Reduction Act (PRA) estimates which (i) are not a sufficient replacement for economic analysis and (ii) contain numerous “infirmities” (e.g., the proposal’s PRA estimates “reflect a quadrupling of the

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SEC's current estimate using assumptions that depart substantially from those used by the SEC for over a decade")¹²; and

- **Statutory Authority under Section 13(f).** The proposal does not address whether Section 13(f)(1) of the Exchange Act provides the SEC with the relevant authority to increase the reporting threshold to \$3.5 billion.¹³

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ENDNOTES

- ¹ See SEC, *Reporting Threshold for Institutional Investment Managers*, Exchange Act Release No. 34-89290 (July 10, 2020), <https://www.sec.gov/rules/proposed/2020/34-89290.pdf> (“*Proposal*”).
- ² Proposal at 12.
- ³ Proposal at 17-18.
- ⁴ Proposal at 29.
- ⁵ See Special Instruction 10 on Form 13F.
- ⁶ Proposal at 31.
- ⁷ Proposal at 31.
- ⁸ Proposal at 34.
- ⁹ Proposal at 37. The SEC believes that this amendment to the confidential treatment instructions is necessary in light of the U.S. Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), which changed the standard for determining whether information is “confidential” under exemption 4 of the Freedom of Information Act.
- ¹⁰ SEC, *SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today’s Equities Markets* (July 10, 2020), <https://www.sec.gov/news/press-release/2020-152>.
- ¹¹ Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting* (July 10, 2020), <https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10> (“*Public Statement*”).
- ¹² Public Statement at paragraph 2.
- ¹³ Particularly, Commissioner Lee notes that the statutory text of Section 13(f)(1) provides a reporting threshold of \$100 million “or such lesser amount (but in no case less than \$10 million).” See 17 CFR § 240.13f-1. Commissioner Lee stated that the statutory text is clear in that Congress provided the SEC with the relevant authority to decrease (but not increase) the \$100 million reporting threshold. See Public Statement at paragraph 14.

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