

MEMO# 32790

September 29, 2020

ICI Files Comment Letter on SEC's Form 13F Proposal

[32790]

September 29, 2020 TO: ICI Members
Investment Company Directors
ICI Global Members
Accounting/Treasurers Committee
Closed-End Investment Company Committee
Equity Markets Advisory Committee
ETF (Exchange-Traded Funds) Committee
ETF Advisory Committee
ICI Global Regulated Funds Committee
SEC Rules Committee
Small Funds Committee SUBJECTS: Closed-End Funds
Compliance
COVID-19
Exchange-Traded Funds (ETFs)
Fund Accounting & Financial Reporting
Fund Governance
International/Global
Investment Advisers
Operations RE: ICI Files Comment Letter on SEC's Form 13F Proposal

On September 29, ICI filed a comment letter on a proposal by the Securities and Exchange Commission (SEC or “Commission”) to raise the reporting threshold for Form 13F reports filed by institutional investment managers (“Proposal”). The Proposal would raise the reporting threshold from \$100 million to \$3.5 billion, eliminate the omission threshold for individual securities, update the standard for requesting confidential treatment, and require managers to provide certain additional identifying information.[\[1\]](#) ICI’s comment letter is attached, and is summarized below.

ICI’s comment letter recommends that the SEC not raise the current Form 13F reporting threshold as proposed. While we generally support the SEC periodically reevaluating its existing regulations, the letter explains that the Proposal fails to adequately consider the reliance market participants and the public place on this useful, reliable, and freely available source of market data. The letter urges the SEC to rethink its approach to the rulemaking, given the many benefits of Form 13F data. If, however, the Commission

believes some increase in the threshold is necessary, we recommend raising the threshold based on inflation, as measured by the Consumer Price Index (CPI).

Market Participants Use Form 13F Data for a Variety of Legitimate Purposes

The letter explains that, since the Commission adopted Form 13F in 1978, an increasingly broad cross-section of market participants, the general public, and the SEC rely on Form 13F data as a useful, reliable, and freely accessible source of key market data. The SEC fails to acknowledge the benefits of Form 13F data for market participants, including closed-end funds and exchange-traded funds (ETFs). The value of Form 13F data to these and other market participants, as well as to the public more broadly, is significant, and weighs heavily in favor of preserving the current reporting threshold.

The letter then explains how registered funds use Form 13F data, focusing on closed-end funds and ETFs. Closed-end funds, for example, may look at the voting authority reported by activist investors in their Form 13F filings to ascertain these investors' activities and intentions with respect to the closed-end fund. Closed-end funds also find Form 13F data valuable in identifying their shareholders for purposes of soliciting proxies and achieving quorum. Form 13F also serves as an important source of data for boards of closed-end funds.

ETFs may utilize Form 13F data to satisfy their regulatory obligations and educate and provide other services and information to their shareholders and distributors. For example, ETFs must satisfy exchange minimum listing requirements, which impose ongoing minimum levels of beneficial ownership, among other requirements. ETFs use Form 13F data to create and offer relevant educational materials, target sales and marketing efforts, and provide fund specific information to shareholders. Further, ETFs may use Form 13F data to engage with shareholders on proxy proposals, as well as to determine how concentrated ownership is in their shares, which may be of interest to investors or distributors.

In the Proposal, the SEC identifies alternative sources of holdings data that it asserts may provide overlapping or similar data to that reported on Form 13F. ICI's letter asserts that the alternative data sources the SEC mentions—including Form N-POR, data reported to the consolidated audit trail (CAT), and data filed on Schedules 13D and 13G—while important on their own, are not a substitute for Form 13F data.

The SEC Should Not Raise the Reporting Threshold

The letter therefore recommends that the SEC not raise the current Form 13F reporting threshold. Given the utility of Form 13F data, the SEC should encourage and support the transparency and accessibility of this data, rather than limiting it. ICI's letter acknowledges the SEC's concern that the reporting threshold has not been revised since Section 13(f) was enacted in 1975, and that the stock market has grown exponentially since that time, resulting in a larger percentage of smaller managers being subject to the Form 13F reporting requirement. We submit, however, that based on the purposes for which Form 13F data is used, capturing the same percentage of the US equities market and reporting managers as in 1975 should not be the Commission's goal. Rather, its goal should be preserving the utility of Form 13F reporting, while making improvements to the reporting process that will further facilitate reporting and reduce unnecessary burdens. Given the passage of time, if the SEC believes it is absolutely necessary to raise the reporting threshold, we recommend an increase to \$453 million based on the adjustment to the CPI from 1976 through 2019.

The letter specifically notes the Commission's concern regarding the potential burdens that Form 13F reporting may place on smaller managers, given ICI's sensitivity to unnecessary burdens imposed on our smaller fund members. We explain that certain of our smaller members have reported that, although filing Form 13F is not a substantial burden, they would welcome increasing the filing or omission thresholds. These smaller members acknowledge that, while on its own, the obligation to file Form 13F imposes only a modest compliance burden, it is one of many compliance obligations to which they are subject that, in the aggregate, impose substantial costs on them. We therefore encourage the SEC to continue to seek out opportunities to reduce or eliminate burdens that may be more impactful to small advisers, and urge the Commission to address concerns about reporting burdens relating to Form 13F by considering our recommendations to raise the omission threshold, along with our recommendations to further facilitate and improve the reporting process.

The SEC Should Increase the Omission Threshold

The Commission asks whether, instead of eliminating the omission threshold, it should raise it, perhaps to increase the share limit to 50,000 and the value limit to \$1,000,000. ICI supports such an increase. We explain that our members believe reporting of positions below these amounts would not be of much interest to market participants and, instead, would add considerable unhelpful "noise" that would make it more difficult to readily assess whether a Form 13F filer holds a meaningful position in a closed-end fund, ETF, or other issuer. At the same time, raising the omission threshold to 50,000 shares and \$1,000,000 would alleviate the need for some smaller managers to report holdings on Form 13F that are too small to be of interest to market participants.

Recommendations to Further Improve the Efficiency of the 13F Reporting Process

The letter recommends several enhancements to facilitate and streamline Form 13F reporting. First, the Commission should make two simple enhancements to the 13(f) security list that it posts on its website:

- Publish the 13(f) security list in the form of a table or spreadsheet, rather than the PDF list, alphabetized by issuer, that it currently posts. This would allow filers to sort and search the security data in the list more efficiently and compare it to data in their internal systems.
- Provide the International Securities Identification Number (ISIN) for each security included on the 13(f) security list. Including the ISIN for each security would also enhance filers' ability to search and sort the data in 13(f) security list more efficiently and better enable comparison to their internal systems.

Second, the Commission should add a bulk upload feature in the EDGAR filing system for Form 13F-NT. Currently, EDGAR only permits Form 13F-NT to be filed on an individual basis. For filers that file a large number of Forms 13F-NT, filing each form individually is very time consuming. A bulk upload feature would streamline the upload process for filers with multiple Form 13F-NT submissions.

Third, the Commission should eliminate Form 13F's requirement for a manual signature, which may be burdensome for global asset managers and difficult to obtain under extenuating circumstances, as demonstrated recently during the COVID-19 pandemic. The letter urges the Commission to rethink more broadly the manual signature requirement in many of its forms, noting that permitting electronic signatures for SEC forms that are filed

electronically would be efficient and consistent with the Commission's focus on modernizing its disclosure and reporting requirements.

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Associate General Counsel

[Attachment](#)

endnotes

[1] For a summary of the Proposal, *please see* ICI Memorandum No. 32605 (July 16, 2020), available at https://www.ici.org/my_ici/memorandum/memo32605.

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