

MEMO# 32605

July 16, 2020

SEC Proposes to Increase Form 13F Reporting Threshold to \$3.5 Billion - ICI Member Call on July 27

[32605]

July 16, 2020 TO: Accounting/Treasurers Committee
Closed-End Investment Company Committee
Equity Markets Advisory Committee
ETF (Exchange-Traded Funds) Committee
SEC Rules Committee

Small Funds Committee RE: SEC Proposes to Increase Form 13F Reporting Threshold to \$3.5 Billion - ICI Member Call on July 27

On July 10th, the Securities and Exchange Commission issued a proposal that would raise the reporting threshold for Form 13F reports filed by institutional investment managers for the first time since the SEC adopted Form 13F in 1978 ("Proposal").^[1] 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. The Proposal is summarized below.

Comments on the Proposal are due to the SEC 60 days after the Proposal is published in the *Federal Register*. ICI anticipates submitting a comment letter, and has scheduled a member call on Monday, July 27th, from 1:30-2:30 pm ET to discuss potential comments. This call is for ICI members only. If you would like to participate in the call, please RSVP to Jennifer Odom at jodom@ici.org and she will send you an Outlook calendar invitation with the dial-in information.

We request that you do not forward this calendar invitation to others. If you would like additional colleagues at your firm to participate in the call, please contact Jennifer and she will send the invitation to them directly. This will help us maintain the confidentiality of our call and allow us to monitor the number of attendees. We appreciate your cooperation.

Background

Section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") requires an "institutional investment manager"^[2] to file reports with the Commission if the manager

exercises investment discretion with respect to accounts holding certain equity securities (referred to as “13(f) securities”)[3] having an aggregate fair market value on the last trading day of any month of the preceding year of at least \$100 million. Rule 13f-1 under the Exchange Act, which implements Section 13(f), requires that an institutional investment manager file quarterly reports on Form 13F, within 45 days of the end of the calendar quarter, if the accounts over which it exercises investment discretion hold an aggregate of more than \$100 million in 13(f) securities.

Information that must be disclosed on Form 13F includes the name of the institutional investment manager filing the report, and, with respect to each section 13(f) security over which it exercises investment discretion: (i) the name and class; (ii) the CUSIP number; (iii) the market value; (iv) the number of shares and type of security; (v) the nature of the investment manager’s discretion (i.e., sole or shared); (vi) other managers on whose behalf the Form 13F is being filed with whom investment discretion is shared; and (vii) the number of shares for which the manager exercises voting authority.[4] Information reported on Form 13F becomes publicly available upon filing, unless the investment manager files a request for confidential treatment (“13F CTR”), pursuant to Rule 24b-2 under the Exchange Act.

Proposal

The Commission proposes to raise the 13F reporting threshold from \$100 million to \$3.5 billion to reflect proportionally the same market value of US equities that \$100 million represented in 1975, when Section 13F was enacted. The Commission explains that the new threshold would result in disclosure of over 90% of the dollar value of the holdings data currently reported while eliminating the Form 13F filing requirement and its attendant costs for the nearly 90% of filers that are smaller managers.[5] The SEC considered various approaches to adjusting the reporting threshold before proposing a stock market growth approach. These alternative approaches, on which the Commission requests comment, include calculations based on the increase since 1975 in consumer price inflation or in the total return of the stock market. The Commission believes that raising the Form 13F reporting threshold to \$3.5 billion would recalibrate the reporting threshold in a manner consistent with the objectives of Section 13(f), while providing regulators and the public with information about the equities holdings of larger managers that “have the potential to significantly affect the securities markets.”[6]

The Proposal also would eliminate the “omission threshold” for individual securities on Form 13F. Currently, Form 13F provides that an institutional investment manager may omit holdings otherwise reportable if the manager holds, on the period end date, 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 (and option holdings to purchase only such amounts). The Commission believes that if the Form 13F threshold is raised to \$3.5 billion, as proposed, it would be less burdensome for large managers that remain subject to the 13F reporting obligation to report all of their holdings.[7]

The Proposal would make several other changes of note:

Modify the Standard for 13F CTRs. The Commission proposes to amend Form 13F’s instructions for CTRs to require managers seeking confidential treatment to demonstrate that the information is both customarily and actually kept private by the manager, and to show how the release of the information could cause harm to the manager. The Commission believes that this change is necessary to reflect a recent US Supreme Court decision that changed the standard for determining whether information is “confidential”

under the Freedom of Information Act.[\[8\]](#)

Reporting of Additional Identifying Information. If an institutional investment manager has a number assigned by the Central Registration Depository (CRD) system of the Financial Industry Regulatory Authority, Inc. (FINRA) or by the Investment Adviser Registration Depository (IARD) System, the manager would be required to report its CRD number on Form 13F, along with the manager's SEC filing number, if it has one.

Technical Amendments to Modernize Reporting. The Commission would make certain technical amendments to Form 13F to reflect the previous change in format to the structured XML data format.

Questions for Discussion

The Commission includes over 30 requests for comment throughout the Proposal. To facilitate our discussion on the July 27th member call, we would like to focus on the following issues, in addition to discussing your views on any other aspects of the Proposal.

1. How is Form 13F information currently used? Is it used by registered funds and their advisers? If so, for what purpose(s)? Would the Proposal affect the ability of registered funds and their advisers to obtain important information? If so, please provide specific examples.
2. Do you agree with the Commission's proposal to raise the 13F reporting threshold to \$3.5 billion? Why or why not? Do you believe a different threshold is more appropriate? Do you believe the new threshold should be calculated in a different manner? If so, how? Do you believe the threshold should be readjusted going forward, either automatically or by the Commission, if necessary?
3. Do smaller fund managers that file Form 13F find the filing obligation to be burdensome? If so, in which respects? Do you support the proposal to raise the threshold or prefer an alternative approach (and, if so, what)?
4. Do larger fund managers that file Form 13F find the filing obligation burdensome? If so, in which respects?
5. Do you support the Commission's proposal to eliminate the omission threshold? Why or why not? Do you believe that the Commission should, instead, retain the omission threshold and potentially raise it (and, if so, how)? Do you agree with the Commission's assumption that reporting smaller holdings will not be burdensome for larger managers and does not generally raise other concerns? Do you have concerns about the ability to obtain confidential treatment for these holdings, if necessary?
6. Do you have any concerns about the Commission's proposal to modify the standard for 13F CTRs, consistent with the recent US Supreme Court decision on the Freedom of Information Act?

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endnotes

[1] See *Reporting Threshold for Institutional Investment Managers*, available at <https://www.sec.gov/rules/proposed/2020/34-89290.pdf>. The Commission's fact sheet for the Proposal is available at <https://www.sec.gov/news/press-release/2020-152>. SEC Commissioner Lee voted against the Proposal in a strongly worded statement asserting that the Proposal would reduce transparency, is not supported by an adequate economic analysis, and does not adequately address the Commission's authority to raise the reporting threshold. See Commissioner Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting* (July 10, 2020), available at <https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10>.

[2] The SEC has explained that an "institutional investment manager" is: (i) an entity that invests in, or buys and sells, securities for its own account; or (ii) a natural person or an entity that exercises investment discretion over the account of any other natural person or entity. Institutional investment managers may include, among others, investment advisers, banks, insurance companies, broker-dealers, pension funds, and corporations.

[3] Rule 13f-1 provides, in relevant part, that "section 13(f) securities" means equity securities of a class described in section 13(d)(1) of the Exchange Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. These securities generally include equity securities that trade on an exchange (including the Nasdaq National Market System), certain equity options and warrants, shares of closed-end investment companies, and certain convertible debt securities. Shares of open-end investment companies are not section 13(f) securities. The SEC publishes a quarterly list of Section 13(f) securities on its website, available [here](#).

[4] See [Form 13F](#).

[5] The Commission believes that direct compliance costs of filing Form 13F are likely to be proportionately higher for smaller managers, although the compliance cost per manager is higher for larger managers. It also recognizes that managers face indirect costs of reporting, "such as the potential for front-running and copycatting." Proposal at 19.

[6] Proposal at 25.

[7] Specifically, the SEC believes that "[f]or these larger managers . . . the incremental increase in cost, if any, of including securities holdings information below the omission threshold on Form 13F would be immaterial, including because larger managers are more likely to have trading and other systems that can export all of the manager's positions (regardless of size) for purposes of reporting on Form 13F." Proposal at 31. The SEC notes that, to the extent a manager believes that disclosure of a smaller holding may cause harm and qualify for confidential treatment, it may submit a 13F CTR for that holding.

[8] See *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019). This proposed standard would replace the current standard under Instruction 2.d for Confidential Treatment Requests in Form 13F, which requires the manager to "[d]emonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the Manager's competitive position; show what use competitors could make of the information and how harm to the Manager could ensue." The other existing instructions for

a 13F CTR would not change.

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