MEMO# 32760

September 15, 2020

Draft ICI Comment Letter on SEC's Form 13F Proposal - Your Comments Requested by September 22

[32760]

September 15, 2020 TO: Accounting/Treasurers Committee
Closed-End Investment Company Committee
Equity Markets Advisory Committee
ETF (Exchange-Traded Funds) Committee
ICI Global Regulated Funds Committee
SEC Rules Committee
Small Funds Committee RE: Draft ICI Comment Letter on SEC's Form 13F Proposal - Your Comments Requested by September 22

In July, the Securities and Exchange Commission issued a proposal that would 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] Comments on the Proposal are due on September 29.

ICI has prepared the attached draft letter based on member feedback. Please provide your written comments on the letter to Sarah Bessin at sarah.bessin@ici.org **by Tuesday, September 22. The draft letter is summarized briefly below.**

ICI's draft 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 interest of market participants and the public in a 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 utilize 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. Form 13F also serves as a crucial source of data for boards of closed-end funds in their decision-making.

ETFs may utilize Form 13F data to satisfy their regulatory obligations and provide education and other services to their shareholders. For example, ETFs must satisfy exchange minimum listing requirements, which impose ongoing minimum levels of beneficial ownership, among other requirements. ETFs also use Form 13F data to understand their shareholder base to provide relevant educational materials to shareholders and important shareholder services.

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-PORT, 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 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 SEC Should Not Eliminate the Omission Threshold

Given our recommendation that the Commission not raise the reporting threshold, we recommend the Commission not eliminate the omission threshold. Eliminating the omission threshold, especially at the $100 million reporting threshold, would result in reporting of significantly more de minimis positions that, as the Commission recognizes, are "unlikely to have the potential to materially impact the market." The letter asserts that reporting of these positions 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.

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 13F security list that it posts on its website:

- Publish the 13F 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 13F security list. Including the ISIN for each security would also enhance filers' ability to search and sort the data in 13F security list more efficiently and better enable comparison to their internal systems.

Second, 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.

Sarah A. Bessin
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.