The Security Traders Association of New York, Inc.

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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Reporting Threshold for Institutional Investment Managers Release No. 34-89290; File No. S7-08-20

Dear Ms. Countryman:

The Security Traders Association of New York, Inc. ("STANY")[1] appreciates the opportunity to provide comments on the proposed rule published by the Securities and Exchange Commission ("Commission" or "SEC") to amend the reporting thresholds for institutional investment managers.

The Commission is proposing to update the reporting threshold for Form 13F reports by raising the threshold from $100 million to $3.5 billion. The proposal also would amend Form 13F to increase the information provided by institutional investment managers by eliminating the omission threshold for individual securities and requiring managers to provide additional identifying information.

As a professional organization comprised of individuals employed in the securities industry, STANY does not represent a single business or business model, but rather provides a forum for trading professionals representing broker-dealers, market makers, institutions, ATSs, trading centers and technology companies to share their unique perspectives on issues facing the securities markets. Our members perform essential functions in the capital markets ecosystem; an ecosystem that has performed incredibly well and today provides a trading experience for retail investors that has never been better. Our members take great pride in the US equity markets and collectively strive to support regulation and market structure that encourages capital formation, elevates investor confidence, and promotes fairness. We believe that the Proposal is antithetical to these goals and to the Commission's mission to protect investors, maintain fair and orderly markets, and facilitate capital formation. For these and other reasons cited herein, we oppose the proposed changes in reporting thresholds and urge the Commission to withdraw the proposed amendments as it relates to disclosure thresholds.

[1] STANY, a membership association representing professionals engaged in the trading of securities since 1937, is committed to be a leading advocate of policies and programs that foster investor trust, professional ethics, and marketplace integrity and that support capital formation, marketplace innovation and education of market participants.

Background

Section 13(f) of the Securities Exchange Act was adopted by Congress as part of the Securities Act Amendments of 1975. Through quarterly Section 13(f) reporting, the Commission intended to "create ... a central repository of historical and current data about the investment activities of institutional investment managers, in order to improve the body of factual data available and to facilitate consideration of the influence and impact of institutional investment managers on the securities markets and public policy implications of that influence."[2]

Since its implementation, the Commission has recognized the benefits of Rule 13(f) reporting that inure to both investors and public companies. For example, in 1999, while adopting rules requiring the filing of Form 13F via EDGAR, the Commission noted that "investors would find the information contained in Form 13F filings useful in tracking institutional investor holdings in their investments and . . . issuers . . . would find detail as to institutional investor holdings useful because much of their shareholder list may reflect holdings in 'street name' rather than beneficial ownership." [3]

As the Commission notes in footnote 28 in the Proposal, throughout the years, there have been industry efforts to amend and modernize 13F reporting requirements. However, unlike the current Proposal, each of those efforts have sought additional disclosures and greater transparency[4], advocating for shortening reporting deadlines, seeking disclosure of short positions, including disclosure of OTC equity positions, and calling for monthly as opposed to quarterly reports. Rather than revisit industry suggestions, the Commission is looking to modernize 13F reports by proposing a thirty-five-fold increase to the threshold for filing from $100 million in U.S. equity assets under management ("EAUM") to $3.5 billion. As a result of this outsized increase, it is projected that 4,500 investment managers overseeing $2.3 trillion in assets would no longer be required to disclosure their holdings to the public effectively eliminating 13F as a reporting system for most investors, including many activist and event-driven hedge funds. Contrary to industry efforts to improve 13F, STANY believes that increasing reporting thresholds contravenes the objective articulated in the Adopting Release.

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[2] *See* Exchange Act Release No. 15461 (Jan. 5, 1979), 44 FR 3033, at 3033-3034 (See also, Filing and Reporting Requirements Relating to Institutional Investment Managers, Exchange Act Release No. 14852, 43 Fed. Reg. 26700, 26701 (June 22, 1978) (the "Adopting Release").

[3] *See* Exchange Act Release No. 40934 (Jan. 12, 1999), 64 FR 2843, at p. 2844-45 (the "EDGAR Adopting Release").

[4] *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.

The Commission lacks the statutory authority to reduce the 13F reporting threshold

STANY agrees with Commissioner Allison Herren Lee's plain reading of the Commission's limitations on amendments to the reporting threshold in the enabling statute. As Commission Lee aptly notes, Congress established a salutatory reporting threshold of $100 million in EAUM while setting specific limits on the Commission's authority to lower but not increase that threshold.

The relevant text of section 13(f)(1) of the statute provides:

> Every institutional investment manager . . . which exercises investment discretion with respect to accounts holding equity securities of a class described in subsection (d)(1) . . . having an aggregate fair market value on the last trading day in any of the preceding twelve months **of at least $100,000,000 or such lesser amount (but in no case less than $10,000,000)** as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter.[5] (emphasis added)

Commissioner Lee's analysis of the legislative history of the Act is unerring and we agree with her that the Proposal has glossed over those Congressionally mandated limits. We likewise agree that the Commission's use of its exemptive authority to increase the reporting threshold would, "vitiate the limit that Congress placed on [its] authority to rewrite the statute to reflect the opposite meaning from its plain language." [6]

The Proposal contravenes the stated purposes of Congress in adopting Section 13(f) of the Securities and Exchange Act of 1934 [7]

The Proposal would eliminate filings from over 90% of investment managers currently required to file 13F reports severely curtailing the Congressional goal of creating a "central repository of historical and current data about the investment activities of institutional investment managers." Although the Commission notes that other reporting avenues, such as N-PORT, which requires monthly reporting by investment companies, are available to follow the activities of investment managers, small investment managers who are not required to be registered with the Commission may no longer be required to publicly report their investment activities.

Likewise, the objective of "facilitat[ing] consideration of the influence and impact of institutional

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[5] *See* Section 13(f)(1)

[6] *See* Commissioner Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting*, U.S. SEC. & EXCH. COMM'N (July 10, 2020), https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10

[7] *See* Release at 7 n.10, 8 n.19 (citing 15 U.S.C. 78m(f)(1)); *see also* Filing and Reporting Requirements Relating to Institutional Investment Managers, Exchange Act Release No. 14852, 43 Fed. Reg. 26700, 26701 (June 22, 1978) (the "Adopting Release").

investment managers on the securities markets and the public policy implications of that influence" will be severally hampered by eliminating reporting by a swath of investment managers. The Commission's decision to raise the threshold from $100 million to $3.5 billion based on a comparison of total equity values in 1975 and today does not take into consideration changes in investment practices during this period and the importance of small and mid-size investment managers to trading in small and mid-cap companies. With the proposed changes, it may become impossible to determine the impact of institutional investment managers on significant segments of the market specifically small and mid-cap companies.

Frontrunning and copying are not concerns that need to be addressed through changes in reporting thresholds

The claims of frontrunning and copying do not justify changing the reporting thresholds. Firstly, there is an absence of evidence offered in the Proposal for the assertion that frontrunning and copying are concerns that could be mitigated by the amendments to 13F. Secondly, since investment managers have 45 days after a quarter ends to submit 13F reports to the Commission, the filings provide a snapshot rather than a true depiction of fund managers' portfolio holdings or investment strategy mooting concerns with front running and copying. Moreover, as 13F filings do not include non-US traded equities, short positions or OTC equities, or specify the prices at which securities were purchased, they offer at best a partial look at an overall investment strategy. Moreover, if frontrunning were a legitimate concern, that concern should apply equally to accounts with more than $3.5 billion under management.

While it is easier to rationalize copying than frontrunning, anyone copying investment strategies based on a 13F filing position would be buying and selling after the investment management firm which would not negatively impact the investments. On the contrary, buying positions that are already held by investment managers would tend to increase demand and market prices for those positions.

While we appreciate that copying and frontrunning may become issues if the Commission were to radically change the reporting deadlines, or increase the frequency of reports, under current 13F reporting requirements, neither is an issue. These vague concerns certainly do not justify an erosion of transparency.

The modest costs of reporting by investment managers are outweighed by the benefits of transparency

STANY and its members are generally grateful for measure by the Commission aimed at cost savings for the industry and we appreciate the Commission's efforts to lessen the expense and regulatory burdens for small funds. However, we do not believe that there has been an adequate cost benefit analysis of reporting under 13F to justify the Proposal. Likewise, we are concerned that the negative consequences of the Proposal would in the end far outweigh the intended benefits.

Reference to private meetings with "small investment managers" notwithstanding, the Commission has failed to provide evidence that current reporting is an undue burden. While the Commission continues to add costs of disclosure across other areas of the industry, we question why the Commission is concerned about money managers–some of the wealthiest investors–saving thousands of dollars. The rule change would not impact only smaller investment managers who purportedly bear some loosely identified burden occasioned by filing, but would exempt some of the world's wealthiest billionaire investors and large hedge funds [8], all of whom oversee billions of dollars of investments but nevertheless fall below the $3.5 billion threshold.

Rather than conducting an economic analysis, which it is required to do under the National Securities Markets Improvement Act,[9] the Commission has relied on Paperwork Reduction Act (PRA) estimates of the costs of compliance with current 13F reporting requirements by investment managers with EAUM of less than $3.5 billion. As noted by Commissioner Lee, those calculations are troubling. Firstly, the calculations used in justifying the need for changes in the reporting threshold are inconsistent with the Commission's recent and historic estimates of costs of reporting. Secondly, the Commission's estimated hourly costs of filing likely overestimates costs of reporting by using standard and equal estimate of compliance, attorney and coding time.

It is our understanding that for the majority of firms, the process of quarterly reporting is simple and automated. Even for those mangers who prepare 13F forms manually, the Commissions estimates annual costs benefits of the Proposal (using the problematic cost analysis in the PRA) amount to annual savings of approximately $15,000-$30,000 per "smaller" manager. We do not believe that this relatively modest (and likely even smaller) financial burden justifies damage to transparency that would be occasioned by the rule change.

Burden on the Commission staff can be mitigated in other ways

With the increase in the number of investment managers subject to 13F reporting, STANY does not dispute that the Commission staff manages more inquiries surrounding the completion of Form 13F filings now than they did when the rule was initially instituted. However, we believe that the majority of inquiries concern mechanics related to filling out forms and delivering reports to the Commission. With additional information from the Commission on the types of inquiries that it receives, perhaps an industry solution can be offered for streamlining reporting or otherwise minimizing staff time while preserving the transparency afforded by 13F reporting.

The Proposal will disproportionately impact small companies and thinly traded securities

We do not believe that the Commission has adequately considered the effects on secondary trading of these thinly traded securities "or balance[d] the interests of issuers, and particularly small issuers, against the population of institutional investment managers affected by this proposal..." [10] Shares of small to mid-size companies, many of which are thinly traded, are disproportionately held by small to mid-size

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[8] See, *Tepper, Einhorn, Soros Stock Holdings Would Go Dark in SEC Plan* 2020-07-14 19:01:34.266 GMT by Miles Weiss, Ben Bain and Hema Parmar (Bloomberg)

[9] *See* National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, § 106(b) (Oct. 11, 1996)

[10] *See* Commissioner Allison Herren Lee, *Statement on the Proposal to Substantially Reduce 13F Reporting*, U.S. SEC. & EXCH. COMM'N (July 10, 2020), https://www.sec.gov/news/public-statement/lee-13f-reporting-2020-07-10

investment managers and small to mid-size broker dealers disproportionately provide execution and investment services for these securities. Small companies are more likely to use 13F reports to locate investors interested in their sectors and in other companies with similar profiles and use this information to target potential new investors.

Thinly traded securities are also more likely to be held by individual investors who purchase securities through self-directed vehicles without the aid of an investment advisor. To the extent that these individual investors have access to information about professional managers' investment decisions (again after the fact) they are likely to have more confidence about making an investment.

Recently, IHS Markit analyzed the Russell 3000–the 3000 largest companies in the United States–to identify which issuers and investors would be affected most by the change in reporting thresholds and found that market capitalization played a significant role in the impact of the Proposal. IHS Markit concluded that "mega cap (4.4%) and large cap (5.5%) companies would only lose insight into about 1/20th of their total shares outstanding. However, small cap (14.6%) and micro-cap (17.1%) companies would lose insight into roughly three times more shares." [11] The disproportionate loss of transparency into ownership of shares of smaller capitalized firms will hinder their ability to both proactively and passively attract new investment from investors in similar companies.

It will be harder for broker dealers to source and enhance liquidity in thinly traded securities without information provided in 13F reports

The ability of small to mid-size broker dealers to provide enhanced liquidity to investors in the secondary markets will also be adversely impacted by the proposed changes in 13F thresholds. Through capital commitment, secondary offerings, and institutional block trades, broker dealers often facilitate liquidity beyond that which is publicly displayed. Currently 13F filings provide shareholder ownership information that informs decisions by broker dealers. Absent this information, we anticipate that broker dealers will be less inclined to commit capital.

Likewise, broker dealers acting in agency capacities facilitating orders on behalf of clients use 13F filing information to find counterparties. With less transparency–especially in thinly traded securities–broker dealers would need to acquire information about counter parties elsewhere, such as from third-party vendors. Not only will sourcing this information add additional costs to transactions, but there is a likelihood that information sourced through other avenues would be inferior to that which is currently available through 13F reports.

The Proposal will negatively impact the ability of companies to interact with their shareholders

Listed companies rely on 13F filings as the only accurate source of ownership information of their equity shares. Monitoring their investor base is a fundamental and critical activity of public companies and the diminution of transparency into ownership occasioned by the proposed changes will impair the ability of

[11] *See* IHS Markit SEC's 13F Proposal–Issuer and Investor Analysis, August 7, 2020 https://ihsmarkit.com/research-analysis/secs-13f-proposal--issuer-and-investor-analysis.html

public companies to identify and engage effectively with their most active investors, and to gage the efficacy of their investor relations efforts. As a result, communications between issuers and investors would be adversely impacted.

Public companies and their investor relations departments also use 13F data to determine which institutions are increasing or decreasing their holdings so that they may properly allocate scarce C-suite time among investors. Again, smaller companies will be more greatly impacted by the Proposal as they tend to have limited resources and consequently a greater need to allocate IR department time efficiently.

Lack of transparency may open companies to stealth activist attacks

Form 13F reports are the primary source through which investors, companies, and other market participants first learn or verify that an activist hedge fund is accumulating or has accumulated a significant (but less than 5%) position in a target company's stock. Generally activist attacks come from firms that hold less than $3.5 billion in assets. Consequently, raising the 13F reporting thresholds will make it significantly more difficult to determine whether an activist, or group of activists, owns a stake in a company. Of great concern is IHS Markit's finding that, were the Proposal to be enacted, 86% of activist investors would no longer be required to file 13F reports.[12]

The Proposal erodes investor confidence

One of the stated objectives of Congress in adopting 13F was "to increase investor confidence in the integrity of the U.S. securities markets."[13] We are concerned that not only will the diminution of transparency contemplated by the Proposal damage confidence, but that the Proposal itself seems to have created trepidation amongst investors about the integrity of the markets. Investor confidence can be fragile as evidenced by the plethora of comments by retail investors who view the Commission's plan to amend 13F thresholds as a way to "rig the markets" in favor of some of its largest players. These letters and emails highlight the instability of investor confidence and suggest that the Proposal confirms a belief that the markets are stacked in favor of institutional investors, market makers, and other securities professionals.

STANY is confident they the markets are not only not rigged, but that they are performing better than ever for retail investors. However, transparency provided by 13F filings helps to maintain market integrity. Although smaller institutional investors may have sought relief from the Commission, the Proposal does not reflect advocacy by the industry as a whole. Our members, professionals on both the buy and sell side of the markets, overwhelmingly favor transparency and oppose the changes to the reporting threshold reflected in the Proposal.

However, we wish to note that such a significant elevation in the reporting threshold contemplated by the

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[12] *See* IHS Markit SEC's 13F Proposal–Issuer and Investor Analysis, August 7, 2020 https://ihsmarkit.com/research-analysis/secs-13f-proposal--issuer-and-investor-analysis.html

[13] *See* Release at 9 n.20 (citing Adopting Release, 43 Fed. Reg. at 26701, 26701 n.4).

Commission may actually give larger fund managers an incentive to take advantage of the system. It would be easy for investment managers who wish to avoid disclosure to wait until quarter-end and sell securities to fall below the reporting threshold or enter into derivatives transactions that do not count toward the $3.5 billion level. This could eviscerate the intention behind 13F reporting and erode investor confidence.

Elimination of Exceptions and Expansion of 13F Securities to Include OTC Securities

Although we oppose the Commission's proposal to change the reporting thresholds as outlined in the Release, we support the elimination of exceptions to reporting. Eliminating exceptions is consistent with our position taken in 2013 at which time STANY suggested that the Commission expand the scope of 13(f) reporting to all OTC equity securities with a FINRA symbol[14]. The principles which led Congress to adopt Section 13(f) of the Exchange Act mandating managers' disclosures of holdings in "13(f) securities" apply equally to managers' holding in securities of companies traded on the OTC Markets. The creation at the Commission of a central repository of historical and current data about investment activities of institutional investment managers in OTC equity securities would be valuable to the investing public as well as to issuers of those securities.

Summary

We thank the Commission for the opportunity to provide comments on the Proposal. We agree with Commissioner Lee that reducing the reporting threshold for 13F reports is inconsistent with the Commission's statutory authority and contravenes Congressional intent. Moreover, while we appreciate the Commission's goal to reduce costs and burdens on investment managers, the unintended consequences of a drastic reduction in the reporting threshold far outweigh the intended benefits. Access to quarterly ownership information provided by 13F reports is vital for public companies and their ability to engage with shareholders and attract additional investors. Capital formation, secondary trading especially in small and mid-cap companies, and investor confidence would all suffer as a result of increasing the reporting threshold as provided in the Proposal. STANY respectfully requests that the Commission withdraw the Proposal.

As always, our members would be happy to work with the Commission on industry solutions to modernize 13F reporting while maintaining transparency and the integrity of the markets. Please feel free to contact the undersigned with any questions.

Respectfully submitted,

Kimberly Unger

Kimberly Unger
CEO & Executive Director

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[14] *See,* Kimberly Unger, CEO STANY to Elizabeth Murphy, Secretary, Securities and Exchange Commission April 10, 2013 https://www.sec.gov/comments/4-659/4659-11.pdf